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The Treaty-Making Power

With Reference to the Reserved Power of the States

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IT is very evident to lawyers of the present time that there are weighty matters which the framers of the Constitution of the United States overlooked. One of these is the scope of the treaty-making power intrusted to the Federal government. The situation since the formation of the national government has been not unlike the position of two pioneers with land claims extending over a wide intervening territory, for which neither, at the time, has any use. As years pass, it becomes important to both to know the dividing line. The grants, or claims, may be indefinite or overlap. As a possibility the rights of either may, with liberal interpretation, comprehend the entire area of land claimed by the other. Some of the functions of the Federal and state authorities are of this character.

It may be admitted that the treaty-making power vested in the Federal government is one of the delegated powers. The question is, What is delegated?

The Constitution of the United States provides:

Article 6, section 2. "The Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

Among the prohibitions contained in the Constitution are the following:

Article 1, section 10. "No state shall enter into any treaty, alliance, or confederation."

"No state shall, without the consent of Congress, . . . enter into any agreement or compact with another state or with a foreign power. . . ."

In the expression of the powers of the President is to be found this clause:

Article 2, section 2. "He (the President) shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur."

The 10th Amendment to the Constitution is as follows:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people."

These are the only provisions in the Constitution of the United States which immediately touch the subject. It must be remembered, however, that no one clause in the Constitution can rise above another. All have equal authority and equal standing. The declarations of executive, legislative, and judicial powers are of equal weight with the clauses above quoted.

It seems also to be generally conceded that the United States—that is to say, the people of the United States—form a nation with all attributes of sovereignty ascribable to any independent nationality, and that no part of this sovereignty is in abeyance. The whole of it rests in the Federal government, the people of the United States, the state governments, and the people of the states. As the Constitution is explicit upon the point that no state shall make any treaty, and that its power to make any agreement or compact (by which must be intended something less than a treaty) is conditional upon the consent of Congress, it cannot be claimed with reason that any treaty-making power rests in the state governments, or in the citizens of any state, as such. The treaty power has been expressly granted to the President of the United States, acting by and with the consent of the Senate. As a delegated power it rests there as an agency for the people of the United States. This seems to be the proper initial point of view.

Conflicting Opinions.

While all reasonable students of the Constitution recognize that the power is not unqualified in the President and Senate, there are two opposing opinions. The broad constructionists claim that the treaty-making power is one which, in itself, involves all the subjects which can conceivably become of interest or moment in the relations of one government with another; that it is an attribute of nationality and in its nature autocratic. They point to the many comprehensive treaties entered into by the nations of the world, and fail to see any limitation which can arise out of the nature of the power itself. When asked flatly whether the power is unlimited, they answer "No,"—that it must be exercised in conformity with the purposes of our government and people, and for their welfare; but that it must be so exercised, as a moral duty apparently, rather than as a legal obligation. In the words of Mr. Root, "In international affairs, there are no states."

The other school of thought, emphasizing the fact that the treaty-making power is delegated, asserts that it is delegated solely in aid of the constitutional powers otherwise granted, and that the scope of every treaty must be within the measure of the limited functions of the national government.

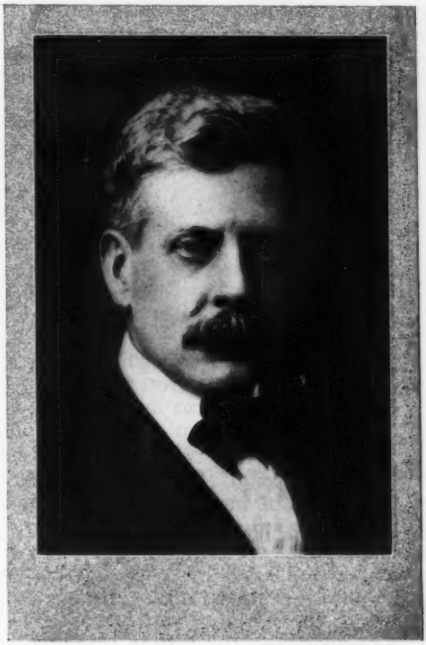
Neither party can support its views consistently. The actions of the government since its inception will not bear out either position in its entirety. The decisions of the Supreme Court of the United States, of the circuit courts of the United States, and the state courts, are at variance with both views.

Limitations Growing Out of Coequal and Reserved Powers.

If we trace the proposition through the history and debates, and concede the binding authority of the best-considered decisions of the courts, we perceive a line of distinction between those limitations of the treaty-making power which arise out of the coequal powers granted to other departments of the government, and those limitations which rest solely upon the reserved powers of the states. The treaty-making power, having its existence as one of the functions of the Federal government through the Constitution, cannot impair the other powers granted by the Constitution. While a treaty is, by the express declaration of the Constitution, the supreme law of the land, it is no more supreme than the law-making powers of Congress. Therefore, an act of Congress can repeal a treaty to the extent that it is law. An Act of Congress cannot repeal the international obligation which has been created by a treaty, the redress for the

breach of which may be diplomatic, or through war; but a later act of Congress may supersede a treaty as law for the people of the United States in all respects with which it is inconsistent. A treaty cannot abrogate the Constitution itself in whole or part, or substitute a different scheme of rights as between the people of the states and the people of the United States. And a treaty *a fortiori* cannot do that which is expressly prohibited by the Constitution.

It is also apparent that wherever the Constitution, or the Amendments to the Constitution, contain restrictions or prohibitions binding upon the national government, such restrictions or prohibitions pertain as well to the treaty-making power as to any other. Furthermore, where the executive authority requires legislative action to carry into effect a treaty, Congress may obstruct the desired result. The international obligation, though complete as a contract, may not be operative or self-executing. Congress has the power to withhold the legislative action. In such matters as the regulation of tariff duties through treaty, involving automatic changes in the revenue laws, there has been much debate, without final determination. As a practice, Congress has adapted itself to the treaties and voluntarily modified the revenue laws to conform to them. In some cases, however, the treaties have been given effect as the supreme law of the land to repeal existing revenue laws, and Congress has not supplied the place.



EDWARD C. ELIOT

So far as these propositions constitute an impairment of the sovereignty of the Federal government, every nation must take notice of it. If the country should ever reach a situation where, by force of arms, another nation should impose conditions for peace, inconsistent with this limitation of power, it would amount to a destruction of the government, and force a revolution.

This would be the case if the United States were forced to cede the territory of a state to another nation, or to grant rights and privileges to aliens involving violations of the positive provisions of the Constitution.

So far, the intermediate or more reasonable view of the treaty-making power is comparatively clear. The question is not or should not ordinarily be difficult of determination, whether the treaty does or does not interfere with the character of our government, or of co-ordinate powers granted to others than the Executive. Nor should it be difficult of determination whether or not the treaty contains provisions which are expressly prohibited by the Constitution, or are impliedly prohibited by broad declarations, such as are contained in the Amendments. At all events, these are justiciable matters for the courts to decide.

But when we pass this point, we reach the real debatable ground.

Validity of Treaty Affecting Reserved Rights.

If a treaty, dealing with our international relations, made in a constitu-

tional manner, touches those rights which the states and the people of the United States have not delegated to the Federal government, is it invalid for that reason? The precedents are to the contrary.

Marked instances are treaties for the extradition of criminals. While Congress may have power to provide for the extradition of aliens, it has no such power over American citizens, in the absence of a treaty. Yet extradition treaties have been in existence since the foundation of the government. They have been sustained by the courts.

Similarly, it is not within the power of Congress to regulate the administration of estates in the territory of the states. But it has been held that a treaty which provides that the estates of aliens may be administered by the respective consuls of foreign governments supersedes to that extent the state law, and must be enforced. It is not expressed to be within the power of the Federal Congress to establish courts in foreign countries; yet a treaty with a foreign government providing for recourse to consular courts for this purpose is valid, and Congress can legislate in aid of its execution. In the Chinese exclusion cases it was held by the Supreme Court that the treaty rights given by the United States to aliens must be respected, the Constitutions and the laws of the states to the contrary notwithstanding. And Congress has enacted laws to punish violations of the treaties to suppress the trade in opium, and for the protection of the seals.

How far the Federal government may modify the rights of citizens of the several states, by international compacts for the protection of foreign commerce, use of the mails, regulation of domicil, marriage and divorce, or any other subject touched by international interest, is hard to say, but at present there seems to be no obstruction in the fact that such treaties may impair what are supposed to be the reserved powers of the states. Perhaps the Supreme Court of the United States may ultimately recognize a distinction between the validity of a treaty as an International Act, and, its propriety as an Executive Act. In this manner the making of a valid but objectionable treaty might constitute a high crime and misdemeanor under the Constitution.

Admission of Japanese Pupils to Schools.

In the difficulties which have at various times arisen with respect to the Orientals in California, these questions have been much debated. In the controversy of 1906–7 relating to the admission of Japanese pupils to the schools of San Francisco, President Roosevelt practically conceded the Japanese point of view in the interpretation of the then existing treaty (1895). This treaty guaranteed to Japanese sojourning in this country equal rights of residence and of property holding with citizens of this country and of citizens of the most favored nation with which the United States might have relations. The question was primarily whether the treaty gave the right of admission to the public schools as one incident to residence. It was not necessarily so. A privilege of residence upon an equal footing with the citizens of the United States, or of the most favored nation, does not seem to include a right of entry to the public schools. Under a very well-established line of authority in the United States, it would not, in any event, include the right to the use of the schools in common with citizens of this country. It has been held that separate schools may be constitutionally provided for negroes without an impairment of their equal rights of citizenship. The Federal administration, however, admitted the Japanese claims and centered its attention upon the right of the Federal government to have the treaties specifically performed. The President, therefore, assumed the supremacy of the treaty over the state and municipal laws of California.

Californian Land Laws.

The contest with respect to the land laws of California is one of still greater importance. In the popular mind no subject is regarded as more exclusively within the reserved power of the states than the ownership and devolution of the title to real estate. But the status of nationals domiciled abroad is peculiarly one for international cognizance. There can be no reasonable doubt of the power of the United States government to enter into treaties which guarantee to aliens at least as free an exercise of property-

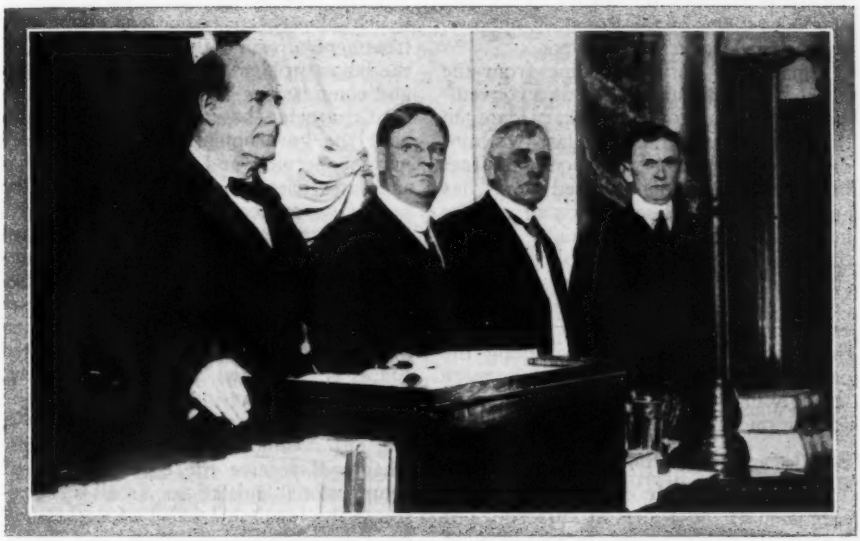


Photo by Underwood & Underwood, N. Y.

SECRETARY OF STATE BRYAN, ADDRESSING THE CALIFORNIA STATE SENATE.

A remarkable photograph taken in the California Senate, showing Secretary of State Bryan addressing the California "Law Makers" on the Japanese Alien Question, in the hope of influencing the legislature in accordance with the desires of President Wilson. On his left are Governor Johnson, Lieut. Governor Wallace and Speaker Young of the Lower House.

owning privileges as are enjoyed by the citizens of the several states. The wisdom of the exercise of this power in respect of the nationals of Oriental countries is another question not here discussed. If the issue should be squarely made, the Federal authority will supersede the state law. Fortunately for the settlement of the present controversy, the California legislature has confined its legislation within the limits of the treaty.

Congressional Legislation in Aid of Treaty Powers.

Not only is it clear that the treaty-making power extends far into the reserved power of the states, but its exercise unquestionably opens new fields of legislation to Congress in matters not permitted to it by the Constitution in direct terms. Since Congress is given power by the Constitution to pass such laws as may be requisite to carry into effect the purposes of the Constitution, it follows that wherever the treaty power has been well exercised, Congress may legislate in aid of it, directly or collaterally. It may put into execution the executive contracts in international affairs, or may provide means for their enforcement. Thus, there is opened to the Federal government, through the channel of the treaty power, the possibility, if not the probability, of an extensive collateral power in Congress, which, in itself, may invade the reserved powers of the states, so far as the treaties make it necessary.

For exhaustive reviews of this subject the reader is referred to the work of Charles H. Butler on the Treaty Power of the United States (1902) and the article of Chandler P. Anderson in the American Journal of International Law, Vol. I., p. 636.

Dominant Ideas of Government.

For two thousand years prior to the Peace of Westphalia (1648), the dominant idea in the world was that of empire. The civilization during this period could conceive of no other substantial basis for government than the centralization of power. The history of twenty centuries was mainly that of wars, in which one nation after another aimed at complete control of the known world.

This was as much the theory of Charlemagne as it was of the Roman Emperors. It was the dream of Napoleon.

During the period of time from the Peace of Westphalia, taken as a convenient though somewhat arbitrary date, to the present date, or say the last two hundred and fifty years, the dominant fact in the history of the civilized world has been the territorial separation of nations into independent governments, having, theoretically at least, absolute power, each within its own sphere of government. The next century, or perhaps several centuries, is to be an era in which the community of interests among the people of the civilized world will be more strongly in evidence than their territorial separation and differences of interest.

Broadening Scope of International Relations.

We may therefore expect hereafter an extension of the efforts at uniformity of law, and of the equal interchange of rights and privileges, which have obtained such an impetus in the last few decades. It is evident that the scope of international relations is greatly widening. Many subjects which would not have been conceived of a century ago as proper subjects for treaties between independent nations must now be regarded as such. International conferences and conventions are the order of the day. The advances in means of communication and transportation have been such as to bring the thinking people of the world much nearer together, and efforts are being made to co-operate in almost every direction of human interest. They have related, among other things, to navigation, monetary standards, international telegraphy, railroad transportation, submarine cables, international fisheries, policing of the ocean, astronomical determinations, freedom of trade, exchanges of official documents, literary and artistic property, regulation of duties, regulation of international canals, promotion of the well-being of the working classes, suppression of the slave trade, protection of labor in factories and mines, control of the sale of spirituous liquors, sanitation and hygiene, social and economic conditions, agriculture, conduct of war, international courts and arbitration.

Unofficial congresses have been held upon almost every scientific and social subject, among the most important of which have been education, commerce, treatment of criminals, and all phases of the labor problem. International unions and commissions of more or less permanent character, having official connection with the governments, exist upon telegraphic service and postoffice, weights and measures, industrial and literary property, protection of fisheries and cables, geodetic survey, agricultural conditions, prison reform, and other subjects. All of this material which is being collected will eventually find its way into lasting treaty regulations between governments; and, so far as the United States is concerned, will, without doubt, reach far into the internal affairs of the people. The treaties will become law, and enforceable by courts in civil suits. They will receive the extensive aid of congressional legislation. In all these respects the inevitable trend of events will be stronger than theories of state rights. The so-called reserved power of the states will yield greatly to the necessities of the whole people.

Congressional Legislation Enforcing Treaty Obligations.

The significance of these considerations in connection with the peace of the world is apparent. If the treaty-making power creates law obligatory upon all of the citizens of the United States or the inhabitants of the United States, that is to say, law which is binding upon all persons within its territorial jurisdiction, there should be adequate machinery to enforce it. At the present time this does not exist. In many minds the constitutionality of legislation to this end is in doubt; but it seems susceptible of demonstration that Congress can act in aid of the treaty-making power to this extent. It has done so in numerous special instances, and the acts have been uniformly sustained bythe Supreme Court of the United States. What is now needed is some general legislation covering the whole subject.

As we now stand, the attitude of the Federal government toward foreign nations is necessarily one of feebleness. Other nationalities which are concerned with the protection of their treaty rights with the United States must look to the Federal government, and to the Fed-

eral government alone, to carry out its obligations. If the treaties are violated by state governments or officials, or by individuals who are not at the time on Federal territory or waters, as distinguished from the dominions of the states, the executive authority of the United States finds no adequate machinery in existence to enforce the law. For threatened acts of wrong by officers or representatives of the state governments, the executive authority must bend to persuade against the anticipated injury, although war clouds may hover over the situation. For actual injury to persons or property through physical violence, reference must be made to the state jurisdictions for punishment of the crimes. And these things exist in coincidence with the disclaimer of any direct responsibility of the state governments or citizens to the foreign nations. It is humiliating to every Federal administration to be obliged to take this attitude toward foreign nations, admitting the violation of solemnly made treaties and pleading the national inability to afford specific redress. In many such cases the United States government has compounded for injuries by the payment of money from the United States Treasury.

If the proposition can be successfully maintained that the treaty-making power can have the aid of Federal legislation, although that legislation may seem to impair what is called the reserved power of the states, then it is competent for Congress to enact laws, of the following character:

First: To declare the violation, or attempted violation, of any existing treaty of the United States with any foreign nation to be an offense against the laws of the United States, and providing adequate punishments according to the grade of the offense and the official responsibility of the person offending.

Second: To provide that all injuries to persons or property of aliens who are within the protection of any treaty obligation shall be cognizable by the courts of the United States, concurrently with the state courts.

Third: To confer jurisdiction upon the Federal courts to entertain applications for extraordinary legal and equitable writs at the instance of the government of the United States against any persons whose acts threaten to violate treaty obligations and perhaps against a state as such.

Fourth: To authorize the use of the armed forces of the United States to carry treaties into effect or to prevent their breach.

With respect to the third consideration, there is no doubt that jurisdiction already exists in the Federal courts to prevent the violation of treaty rights by private individuals, by injunction, where adequate remedies at law do not exist; but legislation will extend and clarify this jurisdiction and make it more effective.

It is also true that the executive power is sufficient for the use of the Army or Navy for the same end. This remedy, however, is so drastic in its nature, and apparently so subversive of the state authority, that it would be well to make its application clear by statute, so that the action of the Executive would not have the aspect of state invasion. This could be accomplished by a congressional definition of the power.

The desirability of legislation along all these lines seems to be very plain. The legislation would do no more than to enforce what is already conceded to be the law. As in all other cases of conflict between Federal and state legislation, the determination of the United States courts upon disputed questions would be final. These propositions are perfectly familiar, and should give rise to no new jealousy between the governments of the states and the government at Washington. In the last analysis, the United States must be conceded to be an independent sovereignty, so far as foreign nations are concerned, and it should provide itself with the requisite machinery to make that sovereignty effective throughout the whole area of its jurisdiction.

It may take a useless and inexcusable foreign war to bring public sentiment to bear upon this subject with sufficient strength to produce the needful legislation.

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Courts-Martial and Military Courts

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MILITARY jurisprudence in the United States dates from the Civil War. The Continental Congress, in June, 1777, adopted sixty-nine Articles of War based on the British model, and elected a "judge advocate of the Army," who was in the following year given the title of judge advocate general. For more than half the years between the adoption of the Constitution and the beginning of the Civil War, the office of judge advocate in the Army did not exist. In all these years courts-martial tried officers and enlisted men for violations of the Articles of War, and on the western frontier, especially after the Mexican War, military tribunals exercised a jurisdiction which the spirit of our institutions never intended should be exercised in times of peace by the military authorities. The custom found its justification in necessity,—in the absence of local civil officers and the absolute need for the exercise of some authority which had the power to maintain order and guarantee security to persons and property. Such exercise of military power was withdrawn from public observation, and the reports of the military commanders relating thereto were buried in the archives of the War Department. The exigencies of the Civil War developed our military jurisprudence and clearly fixed the limits of its jurisdiction.

Kinds of Military Jurisdiction.

Military jurisdiction is divided by the authorities into four kinds: (1) Military law, or the legal system which controls the regular military establishment, and the National Guard when in active service. This is as much a part of the law of the land as is municipal law, and derives its authority from the same source. The President, as commander in chief, has power to make regulations for the government of the Army. Written military law is found in the Articles of War and other statutory enactments, the Army Regulations, and orders and decisions of the War Department and military commanders. There are customs of the service which also have the authority of law. (2) The law of hostile occupation, or military government, which is military power exercised by a belligerent by virtue of his occupation of an enemy's country, over such territory and its inhabitants. This is part of the law of nations. (3) Martial law at home; by which is meant, military power exercised in time of war, insurrection, or rebellion, in parts of the country retaining their allegiance, and over persons and things not ordinarily subjected to it. (4) Martial law applied to the Army; that is, military power extending in time of war, insurrection, or rebellion over persons in the military service, as to obligations arising out of such emergency, and not falling within the domain of military law, nor otherwise regulated by law.

The jurisdiction exercised under the last two heads is founded on necessity and the right of national self-preservation.

Courts-Martial.

There are two kinds of military tribunals, and the jurisdiction of each is clearly distinguished from that of the other,—courts-martial and military

courts or commissions. Courts-martial are composed of commissioned officers, and have jurisdiction of cases arising under military law or custom, and also of acts which are crimes under Federal or state law. As to the latter class of acts the accused is amenable both to court-martial and to the civil courts, and acquittal or conviction in either is no bar to trial in the other for the same offense. The government is represented by a judge advocate, and the accused is entitled to counsel, though this was not formerly the case. After lawful discharge from the military service, a court-martial has no jurisdiction over an offense committed while in the service, except desertion, but if proceedings have begun before the soldier is entitled to his discharge a court-martial may proceed to conviction and punishment after the term of service has expired. Any act of a court-martial beyond its jurisdiction is void, but when such a court has jurisdiction of the person accused and of the offense charged, and has acted within the scope of its lawful powers, its proceedings and sentence cannot be reviewed or set aside by the civil courts. It is the province of courts-martial to enforce military law, which is that part of the law of the land that is made up of the Rules and Articles of War and the usages and customs of military service. It is in force in peace as well as in war, and extends to all in the military service, but not to those in civil life.

FREDERICK C. BRYAN

Military courts or commissions are tribunals for administering justice in criminal cases in times when martial law has been established by competent authority and the civil courts are not open for the exercise of their usual functions. In fact the inability of the civil courts to act is the condition precedent to martial rule and the enforcement of martial law by military courts. Martial law is the will of the military commander and is therefore arbitrary. It has its origin in military necessity and ceases when the necessity ends. It derives no authority from the civil law nor assistance from civil courts, for it overrules, suspends, and displaces both. It extends to all the inhabitants of the district where it is in force, and its powers are limited only by the necessities and exigencies of the situation. The power of military courts constituted by Federal authority is limited by the decision of the Supreme Court in the Milligan Case, 4 Wall. 2, 18 L. ed. 281. In 1864 the court held in the case of Clement L. Vallandigham, a distinguished lawyer of Ohio, who had been tried and convicted by a military commission sitting in that state, on the charge of uttering disloyal sentiments and opinions, with the object of weakening the power of the government in its efforts to suppress the Rebellion, that it had no power to issue a writ of habeas corpus to review or reverse, or the writ of certiorari to revise, the proceedings of a military commission. In 1866, after the war was over, the court held by a divided opinion that a military commission has

no jurisdiction to try and sentence one not a resident of one of the rebellious states, nor a prisoner of war; but a citizen of Indiana who was never in the military service, but was while at his own home arrested, and on criminal charges, among others, of affording aid and comfort to the enemy, inciting an insurrection, and other disloyal practices, was tried, convicted, and sentenced to be hanged by a military commission organized under the military commander of the military district of Indiana.

The syllabus further reads: "In a state where Federal authority was always unopposed, and its courts always open to hear criminal accusations and redress grievances, no usage of war could sanction a military trial for any offense whatever, of a citizen in civil life, in no wise connected with the military service. Congress could grant no such power.

"If, in foreign invasion or civil war, the courts are actually closed, then, on the theater of active military operations, where war really prevails, as no power is left but the military, it is allowed to govern by martial rule until the laws can have their free course."

Declaration of Martial Law by State.

The right of a state to declare martial law in order to suppress insurrection or execute its law is well settled by a long line of judicial decisions. In the Dorr Rebellion, in Rhode Island, in 1842, when an insurrectionary movement attempted to exercise the functions of the state, the state legislature declared that a state of martial law existed, and officers of the state militia acting under military orders issued by the governor broke and entered private houses and arrested persons not in the military service. Action was brought for trespass *quare clausum fregit* by one who was arrested by the militia acting under orders. The Supreme Court of the United States in Luther v. Borden, 7 How. 1, 12 L. ed. 581, held it was not necessary in the case to inquire to what extent nor under what circumstances such power may be exercised by a state, but expressed the opinion that a state may use its military power to put down an armed insurrection too strong to be controlled by the civil authority; that such power is essential to the existence of every government, essential to the preservation of order and free institutions, and is as necessary to the states of the Union as to any other government. The state itself must determine what degree of force the crisis demands. If the government of Rhode Island deemed the armed opposition so formidable and so ramified throughout the state as to require the use of its military force and the declaration of martial law, the Supreme Court said it could see no ground on which it could question the authority of the state. This was a state of war, and the established government resorted to the rights and usages of war to maintain itself and to overcome the unlawful opposition. In such a state of things the officers engaged in its military service might lawfully arrest anyone who, from the information before them, they had reasonable grounds to believe was engaged in the insurrection, and might order a house to be forcibly entered and searched, for without such power martial law and military array would be useless. This power, however, is not unlimited. It was held to be subject to the important limitation that no more force can be used than is necessary to accomplish the object, and any person exercising the power for the purpose of oppression or doing wilful injury, or he by whose order it is committed, would undoubtedly be answerable.

Colorado and Idaho are two states in which in recent years the governor has called out the state troops to suppress insurrection, and martial law has been declared. In both states the supreme court of the state declined to interfere with such action of the governor, and sustained his proclamation of martial law. The right of a military court to try civilians under such circumstances was not tested in either case.

The right was upheld in two recent decisions of the supreme court of West Virginia, growing out of a coal-mine strike in a restricted area in that state. In the first case, decided December 19, 1912, it was held that the governor of the state has the power to declare a state of war in any town, city, district, or county of the state in the event of insurrection

or riot therein, and in such case to place such community under martial law. The right of the state to use its military power in such cases is based on the duty and power of self-defense. The court followed the doctrine laid down in the Colorado and Idaho cases, and held that it is within the exclusive jurisdiction of the executive and legislative departments of the government to say whether a state of war exists, and neither their declaration thereof nor executive acts under the same are reviewable by the courts while the military occupation continues. The authorized application of martial law to territory in a state of war, in this case a magisterial district of a county, includes the power, said the court, to appoint a military commission for the trial and punishment of offenses within such territory, notwithstanding the civil courts are open and sitting in other portions of the county. In this case the relators sought in vain by writs of habeas corpus to secure discharge from the state penitentiary where they were confined under sentence of a military commission for acts committed in a short interim between two military occupations of the insurrectionary and riotous district.

The second case, decided March 21, 1913, grew out of applications for writs of habeas corpus which alleged detention in a military guardhouse by the military authorities of the state acting under the orders of the governor. The court reaffirmed its former conclusions, and remanded the prisoners, declaring that when a state of war has been declared in any part of the state on an occasion of insurrection, the war power of the state prevails in that part of the state to the exclusion of the civil powers, and that arrests and detention under such exercise of military power do not violate the terms of the Constitution of the United States.

These acts of the governor of West Virginia, and the decisions of the court of last resort of that state upholding them, were very severely criticized in recent debate in the Senate of the United States. The governor was denounced as an "autocrat," "military despot," and "dangerous criminal," his acts branded as "despotism," "monstrous," and "usurper's crime," and the decisions of the state court as "absolutely illegal" and its opinions as worse than some of those of Lord Jeffreys. The Senate resolved to investigate the situation, and a committee has by this time begun its work on or near the scene of the troubles. The claim that such an investigation was a violation of the sovereign rights of a state could only rally ten votes in the Senate.

A more recent use of martial law and of military courts to try persons not members of the military establishment occurred in Ohio during the recent devastating floods. This happened in a time of profound peace, when there was neither insurrection nor riot, but where, in some places, as in Dayton, the entire city was overwhelmed with ruin and death and all the civil functions of government were for the time paralyzed and suspended.

The last word from the Supreme Court of the United States on this question is found in Moyer v. Peabody, 212 U. S. 78, 53 L. ed. 410, 29 Sup. Ct. Rep. 235. The plaintiff sued the governor of Colorado for false imprisonment because he was detained by the military authorities two months and a half in a county where the governor had declared a state of insurrection existed. The complaint was dismissed on demurrer in the circuit court, and the judgment below was affirmed.

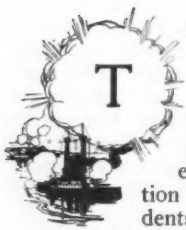
It seems to be the settled doctrine that the courts will not interfere with the decision of the executive department of the state in determining that a state of insurrection exists, requiring the use of the military arm of the state. When, under such circumstances, the civil courts are closed and unable to carry on their usual processes and functions, the only power which can maintain order and administer law is the military arm of the state. What are the limitations of that power? Whether the Federal courts will, in such cases, revise the judgments of military courts commissioned by the executive is an important question worthy of speedy determination.

Bombardment of Residential Districts

BY PERCY BORDWELL, Ph.D.

Professor of Law, State University of Iowa

Author of Treatise on "The Law of War Between Belligerents."



THE recent protest of Italy against the bombardment of the residential sections of Scutari by the Montenegrins has called general attention to a situation not unfamiliar to students of international law. One of the greatest advancements in modern warfare has been the elimination of many of those hardships which down to the peace of Westphalia in 1648 were the normal lot of noncombatants. Enlightened and efficient commanders, like Henry V. and Gustavus Adolphus, enforced standards of conduct which compare not unfavorably with those of modern times, but these men were exceptions, and in general there was little respect shown either for private property or the home.

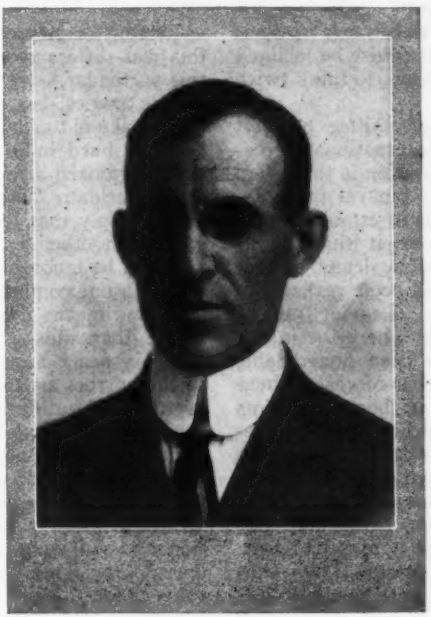
The period following the peace of Westphalia was a period of advance in military science, and much of the improvement in the conduct of warfare which Vattel noticed something over a hundred years later was due to the enlightened self-interest of the combatants themselves. Pillage is not conducive to discipline, nor is it an effective means of living off the country, and none saw this more clearly than the best generals of this period. But it was not only the self-interest of the belligerents that led to the amelioration of the condition of noncombatants. In 1625 Grotius had written his work on the Law of War and Peace, in which he had drawn his illustrations from the best practice and precept of Greece and Rome, and it made a distinct impression. The great Gustavus is said to have slept with a copy of it under his pillow, and although it could do little to check the barbarity of the Thirty Years War, the conditions for its good influence, being felt, were more favorable in the less passionate dynastic wars which followed. Vattel was the most influential of Grotius's successors. Writing in 1758 of the warfare of his time, he could say: "It is against one sovereign that another makes war, and not against the quiet subjects."[1]

The Revolutionary and Napoleonic Wars marked somewhat of a reaction in the treatment of noncombatants, but the long period of peace which followed, the industrial revolution which resulted from the great inventions, and the spread of the doctrines of free trade and the brotherhood of man gave rise to dreams of a perpetual peace, and, when war actually came, to substantial modification of some of its rules. By the Declaration of Paris of 1856 privateering was abolished, and the principle that "free ships make free goods" established. This was followed by the Red Cross Convention of 1864 for the better care of the sick and wounded. In 1874 the first official attempt to draw up an international war code was made in the Declaration of Brussels. This failed of ratification through the opposition of Great Britain, but it served as the basis of the Regulations Respecting the Laws and Customs of War on Land adopted at the Peace Conference of 1899, which, as modified in some details by the second Peace Conference, form the bulk of our present code for land warfare.

The Hague Regulations forbid the bombardment of undefended towns; re-

[1] Book III, chap. IX, § 167.

quire that the commander of an attacking force, before commencing a bombardment, except in case of an assault, do all he can to warn the authorities; direct that all necessary steps be taken to spare as far as possible the buildings devoted to religion, art, science, and charity, historic monuments, hospitals, and places where the sick and wounded are collected, which should be marked by some special sign; and prohibit the pillage of a town or place even when taken by assault.



PROF. PERCY BORDWELL

The principles of these regulations were applied as far as conditions would permit to bombardments by naval forces by the second Peace Conference. The prohibition against bombarding undefended towns in the Naval Convention is not extended to military works, military or naval establishments, depots of arms or war materials, workshops or plants, which could be utilized for the needs of the hostile fleet or army or ships of war in the harbor. In such a case the commander must take all due measures in order that the town may suffer as little harm as possible. Undefended towns may also be bombarded by naval forces, if the local authorities, on a formal summons being made to them, decline to comply with requisitions for provisions or supplies necessary for the immediate use of the naval force before the place in question. But the bombardment of an undefended town by naval forces for the nonpayment of money contributions is forbidden. Provision is also made that the signs used to indicate buildings devoted to religion, art, etc., shall consist of large stiff rectangular panels divided diagonally into two-colored triangular portions, the upper portion black, the lower portion white. In neither the Regulations nor the Naval Convention is anything said of the bombardment of the residential sections of defended towns. This is not because the matter has been overlooked by international conferences. The town of Antwerp petitioned the Brussels Conference of 1874 to adopt the principle that when a fortified town was bombarded the fire of the artillery should be directed solely against the forts, and not against private houses belonging to inoffensive citizens. The subject was not one on which there was likely to be general agreement, and as the object of the Conference was to crystalize the rules on which there was general agreement, rather than to settle controverted points, the committee which considered the petition placed it on record, but held out what comfort it might in the declaration of the general principles of the immunity of noncombatants and of respect for private property; voiced the hope that these principles would in the future bring about a realization of the desire of the citizens of Antwerp; and expressed confidence that every commander of civilized armies "would always consider it a sacred duty to employ every means in his power, in the case of a siege of a fortified town, to cause private property belonging to inoffensive citizens to be

respected as far as local circumstances and the necessities of war will admit."[2] "Local circumstances and the necessities of war" may cover a multitude of sins, and it is not likely that a commander bent on bombarding the residential section of a town would find this expression of confidence a serious check on his actions, but it may well cause a commander who would otherwise be inclined to take action of this kind, to think twice before taking it.

The hope of the committee has not been realized in any international agreement, although the provision in the Naval Convention that when a naval force destroys military supplies or establishments in an undefended town it shall do as little damage as possible, leans in that direction. Nor has it been realized in international practice. Leaving out of consideration the cases where the injury to private homes has been unavoidable or accidental, the number of cases where the resident portions of besieged towns have been deliberately bombarded in recent wars is not inconsiderable. It seems to have been part of the deliberate policy of the Germans in the Franco-German War. When Strasburg surrendered, "448 private houses had been destroyed completely, nearly 3,000 (out of a total of 5,150) were more or less injured, 1,700 civilians had been killed or wounded, and 10,000 persons were made homeless. The total damage done to the city was estimated at nearly £8,000,000."[3]

The practice is objected to on principle, on the ground that it is an attempt to bring pressure to bear on the other belligerents through the suffering and fears of noncombatants. G. F. de Martens is authority for the statement that during our Revolutionary War Great Britain laid down the following proposition as a recognized rule of war: "When, in war, one is not able to destroy the adverse party or to lead him to reason without reducing his country to distress, it is permitted to carry distress into his country."[4] Whether any such rule was ever formally enunciated by Great Britain, there was much in her conduct of the war, as for instance the raids by Benedict Arnold, to give color to de Martens' statement.

General Sherman wrote to General Halleck in a similar strain from Savannah, December 24, 1864. He said: "I attach more importance to these deep incisions into the enemy's country, because this war differs from European wars in this particular,—we are not only fighting hostile armies, but a hostile people, and must make old and young, rich and poor, feel the hard hand of war, as well as their organized armies."[5] And so, General Sheridan: "I do not hold war to mean simply that lines of men shall engage each other in battle, and material interests be ignored. This is but a duel, in which one combatant seeks the other's life; war means much more, and is far worse than this. Those who rest at home in peace and plenty see but little of the horrors attending such a duel, and even grow indifferent to them as the struggle goes on, contenting themselves with encouraging all who are able-bodied to enlist in the cause to fill up the shattered ranks as death thins them. It is another matter, however, when deprivation and suffering are brought to their own doors. Then the case appears much graver, for the loss of property weighs heavy with the most of mankind, heavier often than the sacrifices made on the field of battle. Death is popularly considered the maximum of punishment in war, but it is not; reduction to poverty brings prayers for peace more surely and more quickly than does the destruction of human life, as the selfishness of man has demonstrated in more than one great conflict."[6]

Apparently neither General Sherman nor General Sheridan would see much that was objectionable on principle in the bombardment of the residential districts of besieged towns, but the greatness of their names must not blind us to the substantial progress that has been made in the conduct of warfare since they fought. The improved treatment of

[2] Parl. Papers, 1875, Misc. No. 1, p. 285.
[3] Spaight, War Rights on Land, pp. 161 et seq.
[4] Precis, Bk. VIII. chap. IV, § 280.
[5] Rebellion Records, series IV, vol. I, pp. 1094 et seq.
[6] Sheridan's Memoirs, vol. I, p. 486.

prisoners of war and of the sick and wounded since the Civil War refute the heresy that war cannot be refined. No such declaration as that attributed to Great Britain in the Revolutionary War would be tolerated in civilized warfare to-day, and it is not likely that either General Sherman or General Sheridan would have gone to the extremes that their words indicate. They were refuting a doctrine that would make war a duel between the military and naval forces of the two belligerents, and this was a great service.

The doctrine that they were combating has as its text the famous *dictum* of Rousseau, that war "is not a relation of man to man, but a relation of state to state, in which individuals are enemies only accidentally, not as men, nor even as citizens, but as soldiers; not as members of the country, but as its defenders."[7] This doctrine has been used, on the one hand, to stamp as illegal the spontaneous uprisings of the population in occupied territory, and, on the other, to condemn the capture of private property at sea. Each of these matters should be considered on its own merits. It is not axiomatic that no pressure should be brought to bear on the other belligerent save through his armed forces. If effective pressure can be brought to bear upon him through an attack on his commerce, there are strong reasons for allowing the attack to be made. "It takes no lives, sheds no blood, imperils no households; has its field on the ocean, which is a common highway; and deals only with persons and property voluntarily embarked in the chances of war, for the purpose of gain, and with the protection of insurance."[8] The danger to commerce in war has also been one of the powerful preventives of war. To prejudge such a question by a catch phrase such as that of Rousseau would be mischievous.

Equally mischievous would it be to condemn spontaneous uprisings in occupied territory on any such *a priori* grounds. At the Brussels Conference the smaller powers bitterly resented the attempt of the great military powers to incorporate into the text of the Declaration language making such uprisings illegal. They felt that their very life was at stake. General Sherman and General Sheridan did a useful service, therefore, in combating a mischievous theory, and their words must be read in the light of that fact.

About as helpful a generalization as can be made to test the rightfulness of conduct in warfare is that comparatively useless injury is to be condemned. Not vengeance on the enemy, but advantage to one's self, is the end to be kept in view. And the advantage should be weighed in the balance with the injury that would accompany it. Tested by this principle, is the bombardment of residential sections of besieged towns justified? It may well be doubted. It is said that the inhabitants of Strasburg were in perfect accord with the commander, and that if in their opinion he erred at all it was in capitulating prematurely.[9]

Probably most of the injuries to private residences from bombardments in recent wars have been unavoidable or accidental, due to the fact that the town was practically a walled camp. The tendency to-day is to build fortifications at some distance from the place they are to protect. This is likely to lead to the elimination of the unavoidable and accidental injuries to private residences from bombardments, and to make apparent the intentional character of any such injuries in the future. This, it is believed, will be an effective cause in the practical elimination of the bombardment of residential districts. Though Italy's protest be in advance of the usage of the recent past, it is in line with modern progress, and will perhaps serve as a fresh instance of the progressive character of the law of war.

Percy Bordwell

[7] Du Çontrat Social, L. I, chap. IV.

[8] Dana's Wheaton, p. 401.

[9] Spaight, p. 164.

Mexico and the Monroe Doctrine

BY T. B. EDGINGTON, A. M., LL. D.

Of the Memphis (Tenn.) Bar

[ED. NOTE—Mr. Edgington has made a special study of the Monroe Doctrine and is the author of a treatise on the subject. His suggestion, made in that work, that hereafter all nations who seek a preference in the payment of contract debts by force of arms must first show that they have exhausted all their remedies by mediation and arbitration, was one of the two measures adopted by the Hague Conference of 1907.]

HEN revolution seized upon Mexico, Mr. Taft considered that the Monroe doctrine entailed upon this government unusual responsibilities in respect to foreign subjects domiciled there. He took prompt and resolute measures to secure all the protection for foreign subjects in Mexico that he claimed for our own nationals. The Wilson administration is faithfully carrying out the same policy.

The administration is now confronted with a new question growing out of the irregular method whereby Huerta seized upon political power.

The administration is reluctant to recognize any government head in Mexico until this fact is determined by an election. Maximilian had learned from the diplomatic correspondence between this government and France that the United States would recognize any form of government which the people of Mexico would, by their own free choice, adopt.

Maximilian thereupon declined the Crown of Mexico. Thereupon an election was held in Mexico, and Maximilian was elected by "an immense majority" of the people of Mexico, and accepted. Later on it devolved on this government to decide that the election was fraudulent.

Any election of a President for Mexico will, doubtless, be carried by the same "immense majority;" the same enthusiastic outpouring of the people, that placed Maximilian on the throne of Mexico. An election, therefore, of a President for Mexico will be an election by the machine guns of whatever faction may be in power at the time.

It occurs to me that the best solution of the question would be to recognize the Huerta government at once. This would simply be a recognition of existing conditions, and not a recognition of any legal or moral right to so administer the affairs of the government of Mexico.

Such recognition would cut but little, if any, figure with foreign governments, except as notice to the syndicate in France, which, it is said, is proposing to loan Mexico $100,000,000. Mexico had the question up as to the validity of a loan of $15,000,000 in the year 1859. Mexican bonds amounting to $15,000,000 were issued under the supervision of Miramon, who was at the time at the head of the government of Mexico, like Huerta is now.

The constitutional party of Mexico conceded that all the international obligations must be assumed by the successive governments of the state, yet it claimed that the administration of Miramon was in no sense a government, but that it was only an unsuccessful revolution, and that therefore the obligations created by it were not binding upon the Republic of Mexico.

If Huerta's revolution should be unsuccessful the same defenses could be made against the validity of any bond issues during Huerta's self-constituted rule of the Republic of Mexico, that were so successfully made against the $15,000,000 Mexican bond issue while General Miramon was the temporary head of the Republic of Mexico.

There was, however, a defense of fraud in the sale of the Miramon bonds.

In case the proceeds of the $100,000,000 Huerta loan are used in the liquidation of the just obligations of Mexico, in whole or part, which were incurred prior to the seizure by Huerta of the reins of government, the Mexican government will be bound for their payment to this extent, whether Huerta makes good his title as a *de facto* ruler or not. The states of Sonora and Coahuila are carrying on war against the Republic of Mexico. The state of Sonora now controls the entire territory of the state except the port of Guyamas on the gulf of California. The state of Sonora controls all the railroad lines within the state. These railroad lines connect with our systems of railroads in the state of Arizona at Douglass, Naco, and Nogales. Such protection to life, liberty, and property as our nationals are obtaining are accorded to them by the state of Sonora. Under the rules of international law, the state of Sonora is entitled to have this government recognize her "belligerent rights." The state of Coahuila stands in very much the same relation to us as the state of Sonora. She has control of nearly all her territory. Her railroad system connects with ours at Eagle Pass, and our railroads touch her borders at other points. It is due to ourselves as well as to these two states that "belligerent rights" be granted them.

T. B. EDGINGTON

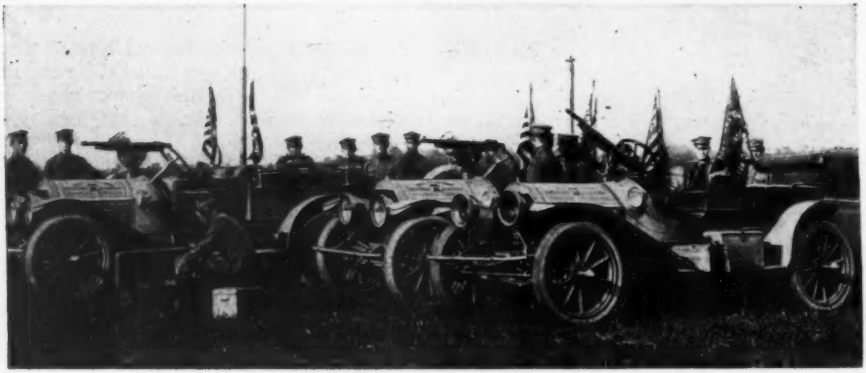
One of our largest transcontinental railroad systems, the Frisco system, has recently gone into the hands of a receiver, partly in consequence of the embarrassments of commerce and traffic on the Mexican border.

These embarrassments would be largely, if not entirely, removed by a recognition of belligerent rights.

Our government could very well take the initiative in respect to the grant of belligerent rights to Sonora and Coahuila and any other states that may hereafter show themselves entitled to such recognition.

The recognition of belligerent rights must not be confounded with the subject of the recognition of the independence of these states of the government of Mexico. This recognition of independence is a very different proposition, and one that is not here under consideration.

T. B. Edgington.



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THE NEW AUTOMOBILE—ARTILLERY FOR SHOOTING AERIAL ENEMIES ON THE WING

The scouting and aggressive possibilities of the aeroplane and dirigible have resulted in the invention of artillery for their special benefit; mobility and rapidity of fire being the chief characteristics of these guns.

The picture shows several of the latest guns of this sort, packed at the Army Aviation School, College Park, Md. As will be seen, they are fitted on armoured automobiles, some of which have wireless apparatus also. The new artillery is manned by U. S. Signal Corps.

Aerial Warfare

BY ROBERT E. HEINSELMAN

"For I dipt into the future, far as human eye could see,
Saw the vision of the world, and all the wonder that would be;
Saw the heavens fill with commerce, argosies of magic sails,
Pilots of the purple twilight, dropping down with costly bales;
Heard the heavens fill with shouting, and there rained a ghastly dew
From the nations' airy navies grappling in the central blue."

THUS wrote the poet Tennyson in 1842, and the Twentieth Century may witness a realization of his dream. Authorities differ as to the number of aeroplanes and other aircraft now owned by the various governments. It is stated[1] that France has 174 aeroplanes, Russia 150, Great Britain 86, Germany 50, United States 16; and that of dirigible balloons Germany has 30, France 15, Russia 9, and the United States 1; also that by 1915, France will have in the military service 900 aeroplanes and 1,500 trained pilots.

The number of aircraft now owned by any government is, however, comparatively unimportant, because the day of "aerial navies" has only dawned, and the number of aircraft available to-day is insignificant compared with the "fleets" which will, no doubt, sail the skies within the next few years. But if war were declared to-day, it is evident that Germany, with her enormous Zeppelins, would hold the supremacy of the air, and that the United States would fall behind the other great powers in equipment for aerial warfare.

But while Germany, with her great aerial battleships, appears to be in the lead, France stands well in the forefront of military aviation. Her activity is evidenced by the steady increase in the French aeronautical budget for the past four years, which is as follows: 1910, $48,000; 1911, $400,000; 1912, $1,024,000; 1913, $7,593,000. In September, 1912, occurred in France the first review of an aeroplane armada, 72 army aero-

[1] American Year Book, 1912.

planes, with their full complements of pilots and motor trucks bearing supplies, passing in review before the French Minister of War.

Imagine a naval warship 500 feet long, carrying a crew of 18 men, with room for storage of 5,500 pounds of explosives, and capable of an average speed of 45 miles an hour, and of remaining in the air from 24 to 30 hours, and you have an idea of one of the ships with which Germany is recruiting her "aerial navy." Twenty of these, it is said, with necessary "halls" for preservation when not in use, can be built for about the cost of one of the latest first-class battleships. Consider that an aviator [2] has made the trip from Paris to London in 185 minutes of actual flying, that an aerial vessel of war, except on a night of brilliant moonlight, would be invisible at a height of 5,000 feet, while the lights of a great city could be easily discerned, and it does not now require the imagination of a Tennyson to fancy the havoc that, in the event of war, a fleet of such Zeppelins might work by sailing up the Thames and dropping a few tons of dynamite occasionally on dark nights on the streets of a city like London.

Turning from the calamities that such enormous air ships might inflict, unless methods of extermination are invented, consider now the military uses of the smaller aircraft, which all the great powers will soon own by the hundred. Their purpose appears twofold,—first, for scouting; second, for attack by dropping or discharging explosives. As to the former, the usefulness apparent from the nature of the invention, confirmed by experiments, assures their value; as to the latter, owing to the meager tests, their efficiency is more doubtful.

Every great war has called forth heroes who have gladly sacrificed their lives to obtain coveted information as to the movements and power of the enemy. Thousands of Germans, it is said, in the Franco-Prussian war of 1870, were martyrs to obtain a bit of intelligence regarding the enemy, which a single eye could have secured if elevated a distance of half a mile. Aircraft in war may, in this respect, prove a messenger of mercy. It must not, however, be imagined that the scouting purposes of the aeroplane and other aircraft will be accomplished without deeds of heroism and sacrifice of life. Indeed, it has been suggested that, with the development of aircraft destroyers, victory will lie with that side which has the most numerous and swiftest air flotilla, because that nation can best afford to sacrifice the necessary number of aircraft to obtain the desired information. This will require bravery of the highest kind. That fatalities will be frequent in the use of military aircraft, even in times of peace, seems recognized by the French government, at least, in counting as war service time spent by an officer in the air, although engaged merely in reconnoitering during a sham battle.

What do experiments show as to the value of aircraft for scouting purposes? Aeroplanes and dirigible balloons have been used in actual warfare in the recent conflicts between the Turks and the Italians in Tripoli and Turkey and the Balkan states.

In the war in Tripoli, the Italian forces were augmented by a fleet of seventeen aeroplanes, which rendered valuable service. Press despatches say that on one occasion several bombs dropped from one of these aeroplanes, caused the death of ten Arabs, and wounded others; that at another time a survey was made by an Italian dirigible of the Turkish position, in which, with three officers, the balloon sailed over the Turkish lines, unharmed by their rifle and artillery fire, and proceeded on its course, dropping bombs until it made a complete and exact reconnaissance of the enemy's camp, estimated the number of Turks and Arabs, took photographs of the position, and in two hours returned with the whole plan of the Turkish position at the disposal of the Italian general.

In press despatches giving accounts of aeroplane and hydro-aeroplane flights by the allies in the recent Balkan War, it is said that a Greek hydro-aeroplane on one occasion made a flight, lasting two hours and twenty minutes, across the Dardanelles and the Niagara dockyard, upon which four bombs were dropped; and

[2] French aviator Brindejonc.

that although the Turkish field batteries and warships fired upon it, their fire was without effect, and the machine made a safe descent. On another occasion, the despatches say, a Bulgarian military aeroplane, while reconnoitering over the fortress of Adrianople, was hit by a Turkish shell and fell inside the lines, and the pilot, a Russian officer, was made a prisoner by the Turks.

Commenting on the value of the aeroplane as a newsgatherer, as demonstrated in the recent Balkan War, Brigadier General James N. Allison, U. S. A., in a recent number of the Military Service Journal, says: "It seems destined to succeed the cavalry as the 'eyes of the army,' doing more certain and efficient work at vastly less cost; for under favorable circumstances it will be easily possible for two men in an aeroplane to discover and report what is passing not only in front, but in rear, of a hostile line, to an extent hopelessly beyond the reach of a cavalry brigade or division."

He comes to the conclusion, however, that the main value of the aeroplane in war will be for scouting purposes, rather than as a destructive agency.

In practice maneuvers, more than in actual warfare perhaps, the scouting value of aircraft has to date been best shown. The London Times, commenting on the British maneuvers in the fall of 1912, says that tactics of the opposing strategists were so completely upset by aerial scouting that they had to be prematurely brought to an end.[3] "Stolen marches, ambuscades, and cavalry reconnoiters were made futile by the ever-present eye of the aerial scout, who sent his warnings down by wireless and made secrecy impossible."

Nearly fourscore aeroplanes took part in the maneuvers in France in September, 1912. The valuable service performed by them, without a single accident, is said to have convinced many army men that the chief value of the aeroplane is as an aid to the cavalry in reconnoitering.

In the maneuvers in Connecticut in August, 1912, the most interesting feature was the scouting of the aviator squadron. The work of Lieutenants Foulois and Milling especially served not only to demonstrate the value of the aeroplane as a means of scouting, but the advantage of having trained army men as aviators. Although both were handicapped by being unable to employ field glasses, owing to the necessity of using both hands in the control of their machines, and the former also by reason of making experiments with wireless telegraph instruments, yet in his reconnaissance of August 13th, for instance, Lieutenant Foulois, upon return to camp after an absence of six hours, was able to make a report covering two typewritten pages and giving the location of thirteen military bodies; and Lieutenant Milling, in a circuit requiring a little over an hour, gathered detailed information that would have taken half a day for a whole brigade of mounted scouts to have collected.[4]

Lieutenant Milling also recently made a flight with another officer from Texas City to San Antonio, 224 miles, on which his companion roughly mapped the country.

Since the value of scout information depends largely upon the length of time intervening between its discovery and report, wireless telegraphy will doubtless play an important part in connection with the use of aircraft for scouting purposes. Indeed, during 1912, many wireless messages were sent from aeroplanes flying 30 to 40 miles an hour, and were received at points several miles away. It is reported[5] that in France a message from an aeroplane which was flying at the rate of 30 miles an hour was received at a point 50 miles away.

Conceding that aircraft will, in wars of the future, play an important part in gathering information, many military authorities believe that this will be practically their only function. However, it seems probable that they can also do effective work as an offensive agency in a number of ways. For instance, granting that the aeroplane could not carry sufficient explosives to annihilate a battleship because of its armor plate, it is conceivable that it might do destructive work in a navy yard; and admitting that the

[3] As reported in Literary Digest, October 19, 1912.

[4] Scientific American, August 24, 1912.

[5] American Year Book, 1912.

open formation of modern armies minimizes the danger from aerial attack, it does not seem improbable that they could greatly delay movement of the army and cause disaster by destroying supplies, bridges, railway terminals and connections, powder mills, cartridge factories, light and power plants, gas reservoirs, and in other ways easily fancied so impair the material resources of the enemy as to contribute greatly to his ultimate defeat.

Of course, the value of air craft for all these purposes depends largely upon the accuracy with which explosives can be dropped or discharged from them. To test their value the Michelins of France offered $30,000 to the French Aero Club, to be distributed as prizes among competitors in the dropping of projectiles. The contest, which closed in August, 1912, was won by Lieutenant Scott, an American, with a newly invented device for dropping explosives. The accuracy with which the bombs, each weighing 15 pounds, were dropped, is interesting. From a height of 656 feet, 12 out of 15 were placed in a circle approximately 60 feet in diameter, and from a height of 2,624 feet, 8 out of 15 were dropped within a rectangle 131 x 394 feet. Of course, these low altitudes in times of war would be extremely hazardous. German regulations place the safety zone above 2,800 feet, and French regulations above 3,000 feet.

Guns will, no doubt, be used by military aircraft to some extent, especially for their own protection. The latest Zeppelins, it is reported, carry a gun above the ballonnets to ward off flying men. The first aeroplane gun, invented by Colonel Isaac N. Lewis, of the United States Coast Artillery, appears in a test made by Lieutenant Milling and Captain Chandler, of the Army Aviation School, at College Park, Maryland, to have demonstrated not only the practicability of firing guns from aeroplanes, but that remarkable accuracy can be attained even though the machine is traveling at high speed. The gun has a rate of firing of from 300 to 700 shots a minute. While aerodynamical laboratories for studying scientifically those problems of the air necessary for solution before aviation can reach its fullest development have been in operation for a number of years in France, Russia, Germany, and England, so far measures for the establishment of one directly by our own government have failed. However, through the Smithsonian Institution, the Langley aerodynamical laboratory has been reopened to work in co-operation with the various departments of the government.

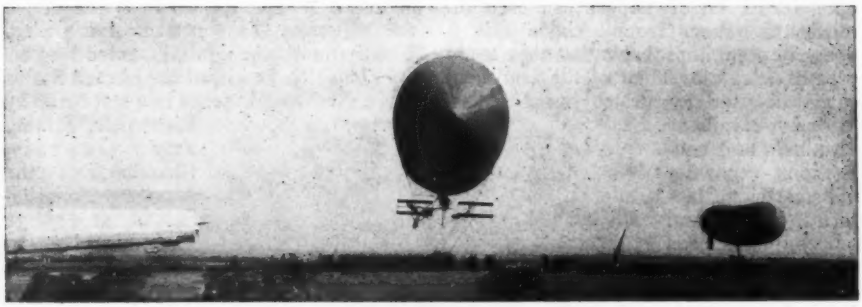
Photo Underwood & Underwood, N. Y.

THE WAR AEROPLANE IN ACTION AT SAN ANTONIO, TEX.

Aviator Parmalee, who is in charge of the Army aeroplane at the mobilization camp in Texas, has so successfully maneuvered the machine there, that he has greatly impressed the military authorities. The photograph shows him and Foulois, another aviator, taking a trial flight over the camp.

At the Army Aviation School, at College Park, Maryland, which was established in June, 1911, the government has been training its future aviators, as well as conducting numerous experiments, such as dropping of explosives, testing of the Lewis aeroplane gun, and taking of photographs from aeroplanes.

With the use of aircraft new legal questions have arisen. The old Roman maxim, *Cujus est solum, ejus est usque ad cælum,* will, no doubt, need new



GERMAN MILITARY AIRSHIPS.

modifications. It is apparent at once that the same freedom cannot be accorded in navigating the air over a nation as in sailing the intervening seas. The traverse of the air above a nation closely resembles in legal aspect the navigation of the marginal seas; and since the freedom of the seas ceases at the 3-mile limit, the point where such freedom might begin to impair the rights of a state, in analogy it would seem that free commerce of the air should be permitted only so far as consistent with the security and privacy of the adjacent state and its citizens.

As regards military aviation, it is desirable that the Third Hague Conference in 1915 shall formulate some universal rules, or international complications, already threatened, are likely to arise. The only regulation so far bearing directly upon aerial warfare which can be accepted as a positive rule of international law [5] is that adopted at The Hague in 1907, providing that "the attack or bombardment, by any means whatever, of towns, villages, habitations, or buildings which are not defended, is forbidden." However, a "Declaration" signed by twenty-seven states, including the United States, but excluding four of the great maritime powers, Germany, Italy, Russia, and Japan, agrees "to prohibit, for a period extending to the close of the Third Peace Conference, the discharge of projectiles and explosives from balloons or by other new methods of a similar nature."

One point concerning which it appears some international regulations should be adopted is the treatment to be accorded captured balloonists and others engaged in aerial warfare. Should they be treated as spies or as prisoners of war? Bismarck in the Franco-Prussian War of 1870 threatened to treat balloonists crossing the German lines as spies.[5] And in 1904 Admiral Alexieff threatened to shoot as spies correspondents on board neutral vessels "who may communicate news to the enemy by means of improved apparatus not yet provided for by existing conventions," in case any should be arrested within the zone of operations of the Russian fleet. The last declaration was evoked by the presence of a London Times war correspondent on board a Chinese despatch boat equipped for wireless telegraphy.

There seems no good reason, however, why those regularly engaged in aerial warfare should be treated differently than those participating in land or naval warfare.

Of course the future of aerial warfare is yet only conjecture. It is possible that the usefulness of aircraft for attack will be inappreciable, and that, with the development of aircraft destroyers, the results obtainable by them for scouting purposes will be disappointing. On the other hand, it may be that the "aerial navies" of the future will dominate military methods more than any influence since that greatest martial achievement of the centuries, the invention of gunpowder. Probably the principal use of aircraft will be military. For its use in war the armies and navies of the world must adjust themselves—it may be by changes the most radical, or by those only slight. Certainly, indications point to a new era in military annals in which aerial warfare will play an important part.

R. E. Heinselman

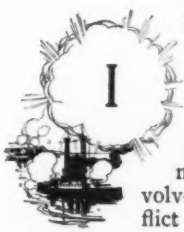
[5] Hershey on Essentials of International Public Law.

The battleship New Hampshire firing a broad side from her port batteries. Note that the recoil of these tremendous guns has apparently no effect on the equilibrium of the ship, so staunch and stable is the latter.

Naval Officers and International Law

BY GEORGE GRAFTON WILSON, LL.D.

Professor of International Law, Harvard University, Author of treatises on "International Law;" "Insurgency;" "International Law Situations," etc.



IN the time of war the naval officer is to obey law. It is not expedient for him to transgress the laws which define the rights of neutrals, lest he may involve his country in a conflict with an additional enemy. He must respect the rights of his opponent, lest reprisals or other retribution may follow. In the conduct of operations in the Spanish-American War of 1898 the officers of the Navy of the United States were, according to general order 492 of June 20, 1898, to be "governed by the rules of international law as laid down in decisions of the courts and in the treaties and manuals furnished by the Navy Department to the ships' libraries, and by the provisions of the treaties between the United States and other powers."

Congress, not the Army and Navy, has power under the Constitution of the United States to declare war, and the naval officer is supposed to obey orders and to bring the contest to a successful issue. The question of right and wrong or expediency of a given line of action is not a subject upon which he is consulted. His orders may be to blockade a coast, to destroy the enemy fleet, or to interrupt enemy commerce or communications. The method of doing this may not be prescribed. He must know the general laws which prevail and the special exceptions. Defeat or interment of his vessels may await him if he exhausts his supply of fuel in a region where the neutral regulations allow supplies only to return to the ports of his home country, and not to go toward the enemy. His cruise may be a successful one if his fuel supply is sufficient to reach a port of a state which by its domestic regulations places no restriction on the amount of fuel which may be

taken. The naval officers must know whether the treaties to which his state is party permit the sequestration of prize, or whether the prize must be released on entering a port.

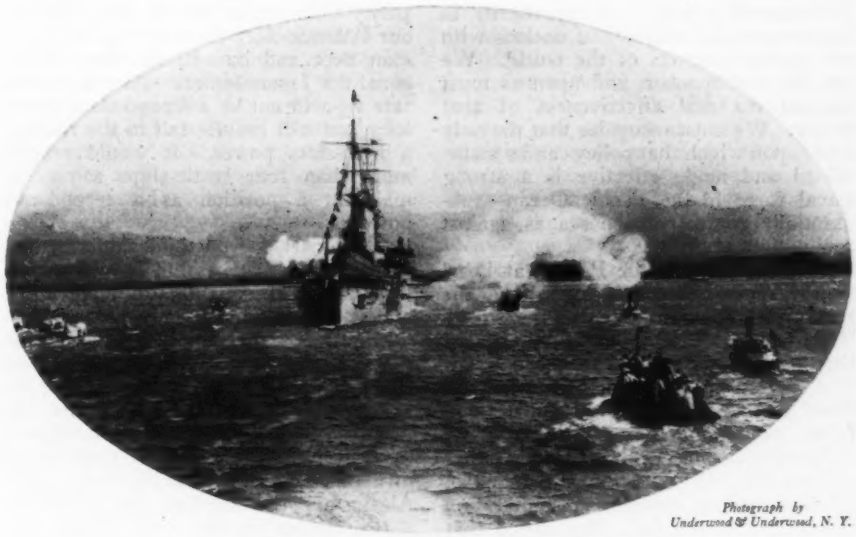
The consequences to which a neutral vessel is liable may vary according to the treaties which prevail between the state whose flag the vessel flies and the state of the naval officer. Some of these treaties may have been made to meet conditions long since almost impossible to fulfil. The provisions of a treaty made to regulate the conduct of the picturesque wooden sailing ship of olden time may be difficult to adapt to the requirements of a modern dreadnaught or submarine. One of the rules most generally repeated is that "before firing a gun in action a vessel must display its national flag." If a submarine must thus disclose its location before firing, its usefulness may be in large measure destroyed, and it may thus become an easy object of attack. The change in instruments of maritime warfare within the lifetime of officers now in service has been so rapid that reasonable acquaintance with these instruments which they must use has been difficult to acquire.

The change in international law, particularly in consequence of the tendency toward codification through international conventions, has in recent years been even more rapid. The Hague Conventions of 1899 and 1907, with the related treaties which have been negotiated in consequence of these Hague Conferences, have led to the development of a body of international law much more extended than any previous to the end of the nineteenth century. With this, as well as the progress in strategy, tactics, gunnery, and other developments of naval warfare, the officer of to-day is to be acquainted. Under these conditions it does not seem strange that in recent wars the Japanese admiral has been accompanied by an adviser in international law.

Geo. G. Wilson

Photo by Boston Photo News Co.

BON HOMME RICHARD 1779
The Famous Fighting Ship of John Paul Jones



Photograph by Underwood & Underwood, N. Y.

THE NORTH CAROLINA ENTERING PEARL HARBOR,
Which Captain Hobson says is the most vital strategic point in the world.

Increased Naval Power

BY HON. RICHMOND P. HOBSON

[ED. NOTE—The following extracts from the utterances of Captain Hobson on this important question are presented by permission.]

THE Monroe doctrine is in effect an announcement that this hemisphere shall not be seized by any foreign power for special advantage. It does not restrict legitimate development or even colonization in the sense of sending citizens there, but it forbids the seizing and control of any part of it by a military power that would hoist its flag and assume special privilege there. When we examine the means for maintaining that doctrine it will be evident to those who have the responsibility that the only way for our ideas to prevail in a land beyond the sea as against the ideas of another nation in the same land likewise beyond the sea from them will be for us to control the sea.

Our liberal and generous policies in Cuba would have been accepted if we had held control of the sea as compared with Spain, and there would have been no war with Spain. The problems there would have been settled by diplomacy.

When Germany landed in Venezuela, we called upon her to retire. Why did she retire peacefully? Because we had control of the sea.

Furthermore, we are now approaching the completion of the Panama canal. Not only the Monroe doctrine, but the Pacific Ocean in general, will receive more careful consideration at the hands of the whole world, and especially at the hands of the American people and their representatives in both parties. Across the great Pacific Ocean, Americans today maintain, or assume to maintain, the principle of the open-door policy. That is nothing more than the old Democratic

principle of equality of opportunity in the commercial relations of nations with the neutral markets of the world. We are the real sponsor, and upon us must depend the real effectiveness of that policy. We must recognize that the only basis upon which that policy can be maintained and made effective is a strong naval force in the Pacific Ocean—substantially control of the sea as against any nation of Asia.

In the middle of the Pacific, at Pearl Harbor, near Honolulu, we have the most vital strategic point in the world. That harbor will control 4,000 miles of that ocean, practically the ocean itself. The nation which ultimately controls Pearl Harbor will direct the policies and future of that great ocean.

America now owns that harbor. Other nations desire it. The permanent control of that harbor depends absolutely on the control of the sea. The nation that has free access to that island, so that its reinforcements can go over, while it can cut off the sending of reinforcements from other lands, will of necessity control that strategic center.

Again, it is not necessary to discuss how we came into possession of the Philippine Islands. We all know we have a responsibility resting upon us in connection with the future destiny of those people. We would not allow peoples in South America to have their destiny determined by a great military power of another continent.

Do you think we would leave the destiny of the Filipinos, now in the hollow of our hands, to be settled by the foreign colonial policies of any monarch? America certainly would not. Evidently we can only maintain our protection and assume the inalienable responsibility by having free access to those islands, which means control of the sea in the Pacific.

In my judgment the only policy that will maintain the Monroe doctrine in peace is to have control of the sea as compared with any nation that might attempt to colonize. The same situation holds true in the Pacific, and our Navy ought to be of such strength that our fleet in the Atlantic would be on a parity with any continental nation of Europe, while our fleet in the Pacific would be on a parity with any power of Asia; that is, our Atlantic fleet should equal the German fleet and our Pacific fleet should equal the Japanese fleet. At our present rate we will not be a second-class power long, but will rapidly fall to the rank of a fifth-class power. It would require more than four battle-ships a year to maintain a position as a second-rate power.

What part do you think America has, —the nation that has finally evolved the institutions of equality, of opportunity, and equal rights, the only basis of enduring peace, the nation that was given the fairest of all the continents, with all its resources, athwart the oceans, the kinsman of all the other nations, the great peace nation? Why do you suppose the great impelling hand of destiny has thrust us out into the Pacific Ocean, with Alaska and the Aleutian Islands of the north, Samoa on the south, Guam and the Philippine Islands on the west, the Hawaiian Islands in midocean — all around and through that ocean—why do you suppose we are there on the threshhold of Asia and its eight or nine hundred millions of people? Why do you suppose the yellow race and the white race are met on American soil?

It is all because America is in the hands of destiny, and has the major rôle to play in the Pacific Ocean, the ocean of destiny, where the civilization of the Orient meets the civilization of the Occident, where the great white race meets the great yellow race.

According to the drift of history this meeting would mean a war of extermination, one or the other. It is for America to lay the solid foundation in equilibrium, upon which the two races may meet as friends in peace to help each other and not as enemies in war to destroy each other. It is not for America to dream or even to fold her hands in prayer, but to take hold of the actual conditions of the real world where we live. She should lose no time to build up power on the sea. Then and then only can we go down to Japan with propositions of mutual concession to solve the problems of the Pacific in peace, the great world problems upon which the future of mankind must large-

ly depend. In this way we can prevent any military power from dominating China and turning the Chinese millions upon the world as a scourge of armies, but on the contrary we could then keep the door wide open for commerce, for science, for industries, for education, for the gospel of peace, keeping the Chinese industries as a great producing power to bless the world.

By building up power on the sea, America can hold the balance of power of the world and keep that balance on the side of peace; it is then that great strides would be taken in promoting the cause of international organization for law and order. It is then that the law of equal opportunity and justice would prevail over the world, the nations that live by might would be restrained from using their armaments, and under this law the nations of peace and commerce, the industrial, producing nations, would advance, while the military nations would drop behind.

The naval policy that would enable our country to protect its vital interests, to prevent war as long as possible, and to win victory when war does come, would also put America in position to do its duty and lay the foundation for a new era in the world in which destroying would give way to producing; in which service would be the measure of greatness. It is with such a naval policy that America can be a "nation of action," and perform its mighty part in destiny, extending the institutions of liberty, and hastening the reign of justice and right, until at last, from ocean to ocean, from pole to pole, there would be on earth peace, good will toward men.

MINING THE AIR.

Flying ships of one form or another, figure in the military and naval calculations of all the great powers. How best to employ them; how to use them; how to resist their attacks; how to destroy them; how to protect them—these questions are in all minds.

Even the atmosphere must be "mined" now, like a harbor exposed to an enemy's fleet. The latest device of this kind is to fill the air above a great fortification, and military depot, with anchored balloons charged with explosives, which would be as perilous to a fleet of invading aeroplanes or dirigibles as a mined harbor to a fleet of battleships.—Garrett P. Serviss.

Lawyers and the Militia

BY MAJOR CHARLES E. LYDECKER

Of the New York Bar

OF all the subjects which CASE AND COMMENT has announced for treatment in its "Army and Navy" number the topic which most concerns the lawyer is "the Militia." "Militia" has so many different meanings to the student, the lawyer, the soldier, and to the politician, that one's first effort should be to get a correct starting point. A nation has permanence as is its strength, and its strength is its manhood or military power, and the militia is the source of supply of that power. The nations have acquired the science of war, and the most ingenious mechanisms have been devised to carry on war, such as the modern battle-ship, with its perfection of detail, of gun and turret, of electrical appliance for motion and carriage, lighting, and communication, of ammunition and projectile, of armor plate, of motive power and management, the forts and land batteries, the equipment of infantry, cavalry, artillery, engineers, signalmen, etc., but all these require the men to act as agents,—"the man behind the gun" counts.

The history of the growth of armies since the day when the English knights fought on foot, and, aided by archers, the germ of the later infantry, defeated their enemy; of the advance to pikes and muskets, and then to the combination of the offensive and defensive by the invention of the bayonet, and so on,—is always the story of strength derived from a nation of men who have had to fight for existence.

The militia is the material for war which a government possesses. The citizens sworn in to compel the enforcement of civil progress are the *posse comitatus;* but the same individuals, organized as soldiers for the defense of their home, are the Militia; and the same individuals, enlisted in the regular establishment of the government, in the Army or the Navy, are soldiers for offense or defense as the circumstances require.[1]

The law of our land may be supposed to shape itself and to be controlled by the Constitution of the United States, a troublesome obstacle to those who are so progressive that they would ignore it; but no better illustration, than the status of the Militia, may be found of the fact that, although the words of the Constitution may remain unchanged, the genius of the Republic admits of a natural development.

In the Constitutional Convention of 1787, the formation of the clause regarding the Militia was most lengthily and stoutly contested. Prior to 1861, when the War between the states turned discussion into action, the congressional debates contained no theme, except finance, so fully and voluminously discussed as military service by the citizen. The fathers believed that all men able to bear arms should be trained. Henry Knox, first Secretary of War, would have deprived men of the vote who declined to do military duty.

The congressional enactment regarding militia, which remained on the statute books over one hundred years from the date of its adoption, 1792, was predicated on the idea that all men able to serve should and would be enrolled, but the law was for years a dead letter.

The language of the Constitution is as follows: "The Congress shall have power (a) to provide for calling forth the Militia, to execute the laws of the Union, suppress insurrection, and repel invasion; (b) to provide for organizing, arming, and disciplining the Militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers and the

[1] The Provincial Congress, June 17, 1775, Resolved that it is recommended to the Militia in all parts of the colony to "hold themselves in readiness to march at a minute's warning." Hence the term "minute men."

authority of training the Militia according to the discipline prescribed by Congress, art. 1, § 8."

The paucity of this language, and the restrictions upon the grant of power therein made, make apparent the opportunity for opinions, of many shades and values, regarding the meaning of the words employed. The great shock to the government came in 1812, when, after six years, the conflict between Great Britain and the United States passed from words to deeds. Connecticut, Massachusetts, and Rhode Island flatly refused to honor the requisition of the President of the United States for militia forces to protect the country, after the declaration of war against England. Questions were formally propounded to the councils and to the judges of the states, *viz.*:

(1) Could the Militia be detached, meaning transferred for duty from state to nation, save for either of the purposes named in the Constitution, *viz.*, to repel invasion, suppress insurrection, and to execute the laws of the land? (They said neither situation had thus far arisen.)

(2) Could the Militia, when called into service of the United States, be commanded by any other persons than their own officers and the President of the United States?

(3) Was the decision of the President, whether or not the exigencies existed, superior to that of the governor?

The answers were emphatic denials.

The War was a step in the education of the country, and the decisions of the Supreme Court in time determined each of these questions. Houston v. Moore, 5 Wheat. 1, 5 L. ed. 19, held, that when called into the service of the United States, Congress has exclusive authority over the Militia, but that a state law, punishing a private who disobeyed the governor's order to go on such service, based on the requisition of the President of the United States, was not unconstitutional.

The substance of ¶ 456, U. S. Army Regulations, to-day, is: The President of the United States can order out the organized Militia in those cases which are specifically provided by law, and the President is the exclusive judge of the existence of an emergency justifying the ordering out of the organized Militia.

Interpretation of the Constitution, on the subject of the Militia, involves as fully as any question the dual sovereignty of state and nation. There are many reports of successive committees on military affairs in Congress, which evidence the desire for a wise, educational, and defensive policy, but also an embarrassment in the advocacy of national control. Militia matters show what, in many other details, has been the development of affairs; *viz.*, that progress in this Republic springs from the activity of those who are actively engaged in the work of the subject-matter involved, and from the labors of these with their legislative representatives, rather than from the recommendations or constructive work of the legislators. Thus the Militia law of the state of New York may be said to have grown almost entirely out of the suggestions of the National Guard Association of the state of New York, an association of the commissioned officers of the New York state Militia. So, too, the national law may be attributed to the activity of the officers of the Militia of the several states. In the late seventies, there was formed a "National Guard Association of the United States," and that body vigorously urged the amendment of the old law of Congress. The bill reported to the House of Representatives in 1882, devised by that association, is substantially the present law. (See Article of General Ordway in the North American Review, April, 1882.) But it took over twenty years to secure its adoption, and until such time as Congress acted, in 1903, very little progress was made in explaining or defining the above constitutional enactment. The poor showing of the Militia in the Spanish American War gave an impetus, and an act was passed which has gradually brought about a most interesting situation, and one that is both commanding and vital. Why? We have come to a time when the nations of the world are alert on the subject of preparedness for war. The English nation is in a violent ferment over the national defense. Lord Roberts urges conscription and compulsory military service by

all men able to bear arms. Lord Haldane, who has gone through thus far with the effort to create the Territorial Army or Special Reserve, asserts that no ministry could survive such laws. Many articles have been written and speeches made to adjust matters, and the latest solution has been offered by Francis Cardinal Bourne, Archbishop of Westminster, who, admitting the wisdom, if not necessity, of preparing all men for military service, proposes that the government aid and make record of all volunteers in educational institutions and such organizations as may be formed to foster military efficiency, and that only the "slacks and shirks" be conscripted and made to do military duty until taught. (Nineteenth Century, April, 1913.) In this country, the subject of national defense is the chief topic of the War Department, and of those connected with military affairs, and of those interested in maintaining peace in a manly way.

The status of the Militia of the United States, under the act of January 21, 1903, as amended in 1908 and 1910, is as follows: All able-bodied male citizens, between eighteen and forty-five years of age, with certain exceptions, comprise the Militia. Those who may be enrolled, uniformed, and equipped by the several states and formed into proper units, as prescribed by the War Department, called National Guards or any other name, comprise the Organized Militia. The remainder are known as the Reserve Militia.

In case of invasion or danger thereof, or the President, with the regular force, is unable to execute the laws of the Union, the President may call forth such Militia as he may deem necessary, and may issue his orders through the Governor to "such officers of the Militia as he may think proper," and the Organized Militia shall always take precedence of any volunteer force which the United States government may raise.

The national government distributes to the states, for the Organized Militia $2,000,000 annually, and defrays in many ways various expenses of the Militia, and, in consequence, the War Department has assumed a partial control and management thereof. In the office of the Secretary of War is a Division of Military Affairs, in which is transacted the business pertaining to the organized and unorganized Militia, including the armament, equipment, discipline, training, education, and organization of the Militia, the conduct of camps of instruction and participation in the field exercises and maneuvers of the regular Army and the relations of the Militia to the regular Army in time of peace.

War Department Orders, Act February 12, 1908.

The chief of the division is the channel of communication between the Secretary of War and the adjutants general of the states, etc., in relation to matters pertaining to the Militia not in the service of the United States. The chief of staff supplies the division with such reports as have a bearing on militia affairs, and the chief of division or Secretary of War conveys to the chief of staff such information as bears on the *personnel* of the regular establishment. A board of five officers on the active list of the Organized Militia is appointed by the Secretary of War to consult with him respecting conditions and the status and needs of the Militia.

Hundreds of paragraphs are now required to regulate the existence of the Organized Militia from the standpoint of the general government, and a still larger number are required to complete the control of the state and the officers in charge. Knowledge of the large body of paper rules is no trifling accomplishment.

The states, at present, bear the initial cost of creating the Organized Militia within their respective territorial limits and maintain these organizations in part. In the several states, the laws of prior years still require the county authorities to supply facilities for housing and training the Militia, who are always amenable to orders from the governor, as commander in chief, and from various other officials, in case of necessity, to put down riot or insurrection, to preserve the peace, and in aid of the civil authorities. The cost of maintaining the Organized Militia may thus be comprehended to be defrayed as follows:

The Federal government distributes among the states sums depending on the size of the force or the quota of the organized state troops; supplies, arms, ammunition, belts, camp equipage, and various military paraphernalia; it details regular officers to instruct and advise, and organizes certain field work and duties in the forts.

The state, from its military appropriation, supplies uniforms, equipment, tentage, and several hundred articles relating to the various arms of the service, makes certain liberal pecuniary allowances to maintain the organizations, and pays its officers and men for all special duties. Within later years the state of New York has been constructing state armories for its organizations.

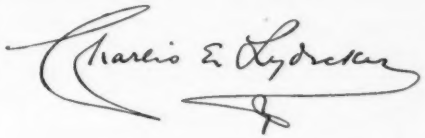
The counties originally built all armories under legislative authority, and many millions of dollars have been expended in the construction of these valuable buildings. The expense of furnishing armories, of lighting and heating them, of paying the employees who are required to keep them in order and care for them, are generally charges against the counties. In addition to these, there are the expenses for the ranges for rifle and artillery practice, the horses, trappings, and other munitions of war, requisite and necessary for the maintenance of the Organized Militia, which the state defrays.

The officers and enlisted men of the Organized Militia perform all services, except when under orders for field service or special duty, without pay, with a few exceptions; hence, it may be seen that this form of military preparedness, although very costly, is not nearly so great a charge as it may become if these men are given regular pay. The Organized Militia of all the states is about 125,000 men of all grades and branches of the service; that of the state of New York is about 15,000. The present Federal control extends to each state which has consented to follow the Federal requirements, as a condition of participating in Federal appropriations. If a state does not consent (as apparently South Carolina is now refusing) its militia is not "organized."

The origin of the Militia under the constitutional government was distinctively in the state; lapse of time has resulted in a revision of ideas regarding the military establishment; and just as the people of the United States have put the subject of individual taxation, by the latest amendment, to the Constitution, regarding the imposition of an income tax in time of peace upon a national basis, so the assumption of control over the Militia by the national authorities is in rapid progress, and is likely to continue until the necessity for military preparedness disappears. It is, however, open to further solution, how the education of the people shall be advanced, whether by extension of the Organized Militia or by training the reserves.

The confusion arising over the present mode of meeting the cost of military preparation must sooner or later be removed. A rough estimate of the distribution of expense is 10 per cent upon the general government, 50 per cent upon the state, and 40 per cent upon the county, and in consequence, it will be seen that the inequality of such expense will become too burdensome upon those communities which enroll a disproportionate number of soldiers.

The Organized Militia is officered by state officers, but this is far from the advancing theories of the day for such a force. President Taft, in an address delivered last year to the New Hampshire legislators, urged that the officers of the National Guard be commissioned by the President of the United States, as the officers of the regular Army are commissioned.



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Use of Military to Restrain Industrial Tumults and Disorders

BY DANIEL CHAUNCEY BREWER

Of the Boston Bar

DURING the past eighteen months the militia has rendered the public efficient service by enforcing order in industrial sections of the country. The fact suggests: (1) A present need for the maintenance of armed forces under Federal and state supervision for police duty; (2) the occasion for giving more attention to the legal considerations involved where disorders follow strained relations between employer and employee, or revolutionaries counsel the infraction of law.

This article is prepared in far too hasty a manner to do other than place certain matter before men whose legal or military training fit them to discuss the *data* submitted.

As an appreciation of the great perils threatening the manufacturing districts of the country is requisite in order to command the attention of such experts, I dare to make the following statement:

At no time in the history of the nation has the majority of the people in the North Atlantic states and other populous sections been more heterogeneous in character, more ignorant of the truth that their liberties are dependent upon a strict observance of law, more inclined to give allegiance to other authorities than the government which requires fealty, more discontented, more inclined to violence.

This situation is explained:

a. By the recent inpouring through normal industrial conditions (here recognized without comment), of 20,000,000 of individuals, many of whom, under conditions perfectly understood and for which they are not here blamed, have been taught to despise law, and the majority of whom have been exploited in spite of the law;

b. To an unpardonable national neglect which has permitted these people to remain uninstructed;

c. To an intense commercialism which has atrophied the nerve centers of the body politic, and permitted clerks and mechanics, manufacturers, and merchants to turn over their duties in a self-governing community to a political group unfitted for anything but "chicane;"

d. To the extraordinary appeal for a betterment of our laws, voiced in a thousand ways by men and women whose common sense is out-stripped by their hearts or thirst for notoriety and who teach a hybrid people to despise existing law, while clamoring for change. This is as reprehensible on the part of any dignitary or moralist as in the anarchist. It is inexcusable where the platform or press of great municipalities like Boston, New York, or Philadelphia stirs masses of men, not yet informed in regard to the great fundamentals which underlie society as well as government, into activities which threaten their own well-being.

So much for a recitation of the status, and the causes responsible for it, and for the fifty (so-called) labor demonstrations which have followed the disorders in Lawrence, Massachusetts.

The question now is, "What are we going to do about it?"

The present apathy of the public reflects the response, "Nothing,—wait for the inevitable!"

The answer of those who understand how dreadful will be the cataclysm, if this advice is taken, and who feel some

responsibility to posterity, is "Act! Do whatever is necessary to enlighten the public as to the brooding danger, and set forces in motion to correct conditions."

As the latter is the only sane attitude, the following suggestions are submitted in the hope that they may receive full consideration and be pertinent to the general purpose outlined in this number of CASE AND COMMENT:—

I. Inasmuch as our Republican form of government requires "the education of the people (presumably in the duties of citizenship and the responsibilities of residence) as a safeguard of order and liberty," it is (a) for the legal profession, which should be theoretically informed on matters of government, to see to it that the schools in every community are teaching the children and the public, that the liberty secured by our fathers and enjoyed by us is dependent upon law; that a democratic form of government, like our own, can only exist by the self-restraint of the individual and the maintenance of order; and that the preaching of certain doctrines now pushed among the laboring classes means the collapse of our institutions; (b) for the military profession to see that ways and means are provided for teaching both the private soldier in the employ of the government, and the militiaman frequently called to do police duty, that however much he may sympathize with a righteous cause, which in any particular instance is backed by rioting, he can serve the aforesaid cause a hundred-fold better by performing his duty to the state and maintaining order, than he can by giving heed to a disorderly mob.

An appreciation of facts like this would always prevent fraternizing with an unruly crowd in cases where loyalty to the colors provides an insufficient motive to hold the soldier to his duty.

If the enlisted man is an anarchist, it is conceded that a full understanding of the fundamental principles of our democracy would be of little avail. Fortunately such an instance is rare. The citizen soldier, whether allied, to use current and mistaken phraseology, with labor or with capital, does not wish to see government by the people go by the board. He should therefore be taught enough history and enough political principles to make it clear to him that the present success of a tumultuous body of people, provided it is not checked, means chaos, on the one hand, or government by an autocracy, on the other.

II. Inasmuch as incendiary talk and disloyal printed matter both threaten to undermine the government, and are having the immediate effect of bringing armed mobs into collision with departments of public safety, it is for the legal profession to determine whether existing law provides suitable punishment for offenses against the body politic, and, if not, to draft proper enactments.

That any such service will be of immense importance both to military officers and civic authorities, when called to handle a situation which has passed the control of the police, is evident.

At present the demand for free speech is undiscriminating, and is embarrassing to those whose function it is to preserve order. Whether this is because of a mistaken notion that any agitator who addresses a hybrid crowd of aliens is on the same plane and platform as the framers of our bills of rights, or reflects the anarchist's hatred of organized society, is immaterial.

The arguments of those who err through mistake are obviously futile, because the characters, lives, and motives of the leading spirits in the American colonies differed in every particular from the lives, characters, and motives of present day revolutionaries, and because their words, phrases, and deliverances absolutely refute the heresies of men and women who place license before liberty, and acknowledge no fealty.

The arguments of the syndicalist, the advanced socialist, and the anarchist are those of the pirate and bucaneer, if as respectable!

The time passed long since when it was still good judgment or wise public policy to permit the latitude of speech which is now common. It is one thing to conserve the right to assemble, the right of petition, and that freedom of speech which attacks abuses and vindicates rights declared to be unalienable. It is quite another proposition when the agitator encourages individual and mob violence,—says things regarding the state

which would be actionable if spoken to the prejudice of an individual—or directly encourages revolution. See Story's Commentaries, p. 1874; People v. Most, 171 N. Y. 423, 58 L.R.A. 509, 64 N. E. 175.

That judges and public prosecutors have been over-conservative in dealing with excesses of this sort is painfully apparent. One would suppose that, with existing deliverances of courts to turn to, men would be clearer in regard to the limitations of language, whether inflammatory or libelous. Their restraint suggests that, realizing liberty itself is differentiated from license through self-imposed restraint, they have leaned backwards in order to avoid offense. This is well enough in tranquil times, but is dangerous to-day, when there is occasion to think clearly, and then to act, lest forbearance prove more harmful to the people's cause than the misconduct of those who conspire against it.

III. Inasmuch as a great part, if not the majority, of the men and women who have heeded the counsel of agitators during the last few months have been aliens, without other responsibility to our Federal or state governments than is required by residence, it is to be hoped—

(a) That we shall not long have to wait for more satisfactory definition of the legal status of these people than at present exists. That they are amenable to the laws of the land, and may be guilty of treason, is apparently settled by rulings of the United States courts. See Wildenhus's Case (Mali v. Keeper of Common Jail) 120 U. S. 1, 30 L. ed. 565, 7 Sup. Ct. Rep. 383; Carlisle v. United States, 16 Wall. 147, 21 L. ed. 426.

Much remains, however, to be shaped up in regard to the relations of the unruly alien, first to the citizen, then to the state, and there is certainly occasion for some such compilation.

(b) That both commanders of troops and police officials will study ways and means of conveying to non-English speaking crowds the purport of their orders. This is demanded as a matter of mere humanity. Too often during recent troubles it has been perfectly apparent that such orders—as one "to keep moving"—given to mob leaders, have gone no further, because these leaders have failed to communicate with their following. It must be perceived by the most casual observer that serious consequences may be expected to follow what appears to be an attack without notice upon citizens claiming to be peaceable, whatever their demand.

IV. Inasmuch as (to paraphrase a recent utterance of Bishop Brent) there is more danger of internal war than of a conflict with Japan or any other foreign power, it is manifestly for the interest of the employer of labor to encourage every effort to strengthen the militia which, under our system, must frequently be called upon to maintain order—and for the laborer to take advantage of the military training offered by the state.

Until recently the manufacturer has turned to the lawyer when his legal rights were jeopardized, and has dismissed such matters from his mind.

Present unrest now makes it prudent for him to give the militia his personal attention also, if he wishes to have the law, to which he looks for protection, properly enforced.

To do this effectively, he must no longer hesitate to grant his employees liberty when they are called to camp or to perform duty as militiamen. Nothing is more essential to his peace of mind than a trained and loyal citizen soldiery, and the business man should not grudge the personal cost that falls upon him to maintain the same.

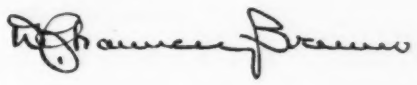
What is true of the capitalist and employer is a hundred times truer of self-respecting labor.

Seriously as the owners of invested property are affected by mob rule, the great burden in time of industrial trouble comes on the men who depend upon their earnings from day to day to support themselves and their families. They should therefore see to it that the law is obeyed which they (generally in the majority) have caused to be enacted. How can they better do this than by serving themselves or permitting their sons to serve for a reasonable season in the militia?

The above observations are tendered for what they are worth. Those who

have given them passing notice will perhaps agree that the presence of great foreign colonies throughout Industrial America opens a new field for our international lawyers.

Far from understanding the fundamentals of this democracy, too many foreigners either reflect the views of autocracies, or the propaganda which seeks the overthrow of all government. At the same time they are subjects of, and owe fealty to, powers with whom the United States is at peace. What they do under unfortunate leadership may at any time lead to annoying complications.



Courtly Chivalry

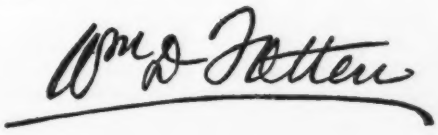
When a verdict goes against you
And you feel a little blue,
And the clouds on life's horizon
Have a dark and dreary hue,—
Falter not—nor be discouraged,
Have a hopeful heart instead;
If you bravely keep a going
You'll see better days ahead.

Is your adversary beaten,
In an earnest, honest fight?
In his hour of misfortune
Have no boasting nor delight;
When you win a righteous verdict
Be a knight in manner true,
And sometime when he's the victor
He'll be courteous to you.

If the clients harbor hatred
In their heated battle lust,
Never yield to the temptation
To be wilfully unjust;
Though you've battled most sincerely
Clients' causes to maintain,
You have fought as lawyers merely,
Brothers still at heart remain.

What is he who plays the "braggart"
But a sounding false pretense,
Vainly striving for promotion
At his fellowman's expense?
Though they gather brightest laurels
From the lawyers' battle fields,
Bravest hearts abound in pity
When a gallant foeman yields.

Like the knights who battled bravely
In the bravest days of old,
Lawyers chivalrous and courtly
All the knightly graces hold;
And there's nothing more delightful
Than to be wherever are
Noblest men of God's creation
Loyal members of the bar.

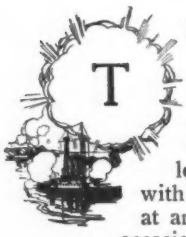


The Articles of War

BY MAJOR-GENERAL GEORGE B. DAVIS

Formerly Judge Advocate General

Author of "Elements of International Law," "Military Laws of the United States"



HE fact that several of the Articles of War were amended at the last session of Congress, and that the entire body is undergoing legislative consideration with a view to their revision at an early day, makes this occasion a proper one for some mention of a statute which was old before the Revolution was dreamed of, which antedates the Constitution itself, as a legislative enactment, and which has regulated the administration of military justice in the Army of the United States for nearly one hundred and thirty-seven years. Let us see at the outset what the facts are in respect to the very oldest enactment upon the statute books of the United States, upon which the discipline of the Army has rested for nearly a hundred and forty years.

The term "Articles of War" is somewhat vague and unsatisfactory, if not misleading, when regarded as a term of description, and conveys no idea as to either the character or sanction of the instrument itself. Is it a formal enactment of a legislative body, or is it something in the nature of executive regulations, emanating from the President in virtue of his authority as commander in chief? The reply is simple,—it is a statute, regularly enacted by the legislative department of the government, and, in its present form, it constitutes a part of § 1342 of the Revised Statutes. Going back of the codification of 1874, the Articles were last enacted on April 10, 1806, and may be found at page 259 of the second volume of Statutes at Large.

At the date of the revision of 1806, the Articles had been in operation for thirty years. There had been some serious friction in our relations with the French Republic which threatened to involve the two nations in war; in 1798 General Washington had been selected to command the military forces which were to be raised for national defense and he had accepted the assignment upon condition that Alexander Hamilton, his old staff officer and friend, should be associated with him in the command. To that end the office of adjutant general, with the rank of major general, was established and conferred upon Hamilton, who at once addressed himself to the task of remedying some well-known defects in the military administration; one of the most important of these was the revision of the Articles of War. The threatening skies soon cleared, however, General Washington returned to his beloved Mount Vernon, and Hamilton resumed his law practice in New York. But the impetus given by Hamilton continued and led to the legislative revision of the Articles in 1806.

The generic term "Articles of War," as applied to a body of authoritative rules for the government of armies, is very old. One of the earliest of the modern codes is that established by the great Swedish soldier, Gustavus Adolphus, which was generally followed and widely imitated on the continent, and in England as well,—the country from which our civil and military institutions are largely drawn. These articles were at first given the form of regulations which continued down to the early part of the seventeenth century, when the long controversy between the King and Parliament began. The right of the King to command the military forces of the realm was conceded by the Parliamentary leaders; equally, as an incident of command, the power to frame disciplinary

rules was admitted to exist in the Crown as an inseparable incident of the Royal prerogative, but the strength of the armies which should constitute the King's command was to be determined by Parliament, and the funds for their support and maintenance were to be furnished by the supreme legislative authority. Upon these questions no agreement was possible between the sovereign and Parliament, and, when the end came in 1688, one of the enactments which formed a part of the great settlement was the mutiny act, a legislative measure giving to an act of mutiny the character of a military offense, which was made triable by a general court-martial.

The Code for the government of the Army had, prior to 1688, consisted of disciplinary regulations, deriving their efficiency from the royal prerogative; the mutiny act was an enactment of Parliament. But the mutiny act formed but a small part of the Articles of War, which were still in the form of executive regulations. As the years went by, constant additions were made by Parliament to the statutory portions of the Articles governing the more important incidents of discipline; the less important details being supplied by executive regulations, issued by the Crown in virtue of its power as commander in chief. This state of things continued until long after the outbreak of the American Revolution, until 1880, in fact, when the articles were given the form and sanction of statutes and the mutiny act ceased to be annually re-enacted. There was no serious occasion for the employment of military forces in the colonies until about the middle of the eighteenth century, when the great war with France over the possession of the St. Lawrence made it necessary for the ministry to seek the support of the colonies in the prosecution of the war. As a result considerable contingents of colonial troops served with the regular forces until the victory of Wolfe, at Quebec, eliminated France as an American power. As the colonies themselves had no Articles of War, or other disciplinary regulations suitable for purposes of war, the English Articles were applied to the colonial forces while employed in conjunction with the Royal troops in America, who thus became familiar with their necessity and operation.

In 1775, when the difficulties between the colonies and the mother country became acute, and considerable numbers of troops were placed in the field, it is not surprising that the colonial authorities turned to the Royal Articles as a guide in preparing their own disciplinary regulations. A code, based upon the Articles adopted by the government of Massachusetts Bay, was adopted by Congress in 1776 for use in the Revolutionary Armies. These were revised from time to time during the progress of the war, the last revision being that of 1786, which was perhaps the most important, as it was the most extensive of the changes which the Articles underwent during the period of the war.

As it is impossible for a military force to be maintained without disciplinary regulations of some sort, the forces continued in the service after the close of the Revolutionary War were governed by the Articles that had been in force during that struggle. After the adoption of the Constitution and the formation of a government under it, in 1789, one of the earliest acts of the First Congress recognized the existing Articles of War, and conferred upon them the force of law until the further pleasure of Congress. The pleasure of that body has been somewhat enduring, having existed for nearly one hundred and twenty-five years. It is earnestly to be hoped that the present session will not be allowed to pass without giving a new, up-to-date, and efficient form to the body of disciplinary rules which has undergone no substantial modification since the adoption of the Constitution.

Geo. B. Davis

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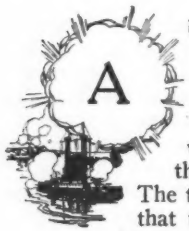
Evolution in Annotation

BY HENRY P. FARNHAM, M. L.

[ED. NOTE—Mr. Farnham's long experience and high standing as a law editor and legal author eminently qualify him to speak of the progress which has been made in furnishing the lawyer with better working tools, and of those editorial ideals which ever tend to make the modern law library more valuable and efficient. This is a practical question worthy of the careful attention of every busy practitioner.]



A REPORT of a law case which makes no pretention to being annotated to-day is almost as rare as was the case which was annotated thirty-five years ago. The theory seems to prevail that the duty of a reporter is not done if he merely furnishes a correct copy of the opinion with accurate headnotes, adequate statement of facts, and helpful excerpts from briefs. He must, in addition, give the reader some additional light upon the problems solved by the court by reference to other cases in which the same or similar problems were involved. The spirit which animates this additional matter is good in all cases, and when the publication is sold, largely because of its annotation, it is necessary. While a judicial decision is now, as always, an application of a principle to a given state of facts, the modern lawyer is not satisfied with one elucidation of the principle, no matter how accurate and profound, but he wishes to know how other courts have dealt with the same question, even when he himself is capable of discerning the principle and reasoning to a proper conclusion the question of its applicability to particular states of fact. If he is not capable of thus reasoning as to principle, he insists upon knowing the various conclusions which have been reached in cases presenting similar facts, and to be given the opportunity of counting the decisions upon the respective sides so as to know what the weight of the authority is. Aids to this knowledge are, therefore, welcome and more or less helpful, according to the fullness and accuracy of the information conveyed. To furnish these aids, annotation is furnished. This is of many varieties and many degrees of excellence. That requiring the least effort, and costing the least money, is composed of references to places where cases have been gathered either in notes to other reports and text-books, or in digests. The value of this annotation depends entirely upon the quality of the work to which reference is made. If it is to a carefully prepared and exhaustive collection of cases which are fully set out, accurately classified and distinguished, it may be very helpful in pointing the reader to the place where he will find a solution of his problem. If it is to a mere collection of cases which are not classified or distinguished, it may save a little time by relieving the reader of the necessity of searching through books of reference for himself, but he is still left to do most of the work in examining original sources and ascertaining the true force and value of the cases cited. If it is to a section of a digest, it merely saves him the time which would otherwise be required to turn to the scheme of the subject in the digest to ascertain which section deals with the subject-matter under examination which, when found, is the mere crude material from which briefs, reports, and annotation proper is made; for experience shows that as cases are collected in a digest section, with nothing to show their distinguishing or harmonizing features, the material found is little better than a reference to so many cases to look up.

Subsequent History of Case.

Another class of annotation which is of value within certain narrow and well-defined limits is that which shows where the reported case has been cited, criticized, followed, explained, distinguished,

or overruled. This class of annotation has two principal values: First, it shows how the case under consideration has been treated by other courts, and therefore, to an extent, its value as a precedent; and, second, it sometimes, in cases containing novel points, assists in finding other similar cases which might not be readily found in the ordinary reference books. If the citing cases are unclassified, the reader may have to examine a large number of references without finding anything of value to him, the citations being to minor or unimportant points in the cases. This annotation is more valuable if the citing cases are classified, but a serious objection to it is that it is likely to furnish only cases in harmony with the case under consideration, and thereby mislead by failing to disclose what there may be on the other side. If this annotation is properly classified, and its limitations are kept in view, its value is sufficient to justify its addition to the library.

Leading Cases.

Another class of annotation consists of a collection of leading or important cases more or less in point with the case reported. This annotation is usually prepared by the judge writing the opinion, or by the official reporter of it. Its value depends upon the care with which the cases are chosen, and the fullness and accuracy with which they are set out, the value increasing as the necessity for consulting the original reports diminishes. Of slightly more value is the annotation which purports to be an exhaustive collection of the cases in point, arranged in a few general groups, with now and then an illustrating case set out fully enough to illustrate the general application of the principle involved. Experience teaches that few cases are actually on all fours with respect to the point actually decided in them. Many may be found which will lay down the same broad principle as a basis for reasoning, or as leading to the conclusion reached; and when many cases are found grouped under one proposition, examination will disclose that the reader receives little aid beyond ascertaining the general subject to which they relate, and that he must examine them, case by case, to learn what application was made of the principle involved, and whether or not it is of value in the solution of his problem. Such general grouping can be easily and quickly done, but, unfortunately, it leaves the reader to perform the real work himself, telling him only what cases to include in his examination.

Much more useful than the above is the annotation prepared by the competent text writer, based on elucidation of the principle involved in the decision under review, illustrated and fortified by well-reasoned cases. This annotation seldom purports to make an exhaustive collection of cases upon the subject, but intends to utilize the leading ones, and so illuminate and expound the principle involved that the reader will have no difficulty in determining its scope and applicability, and will be able to settle his own problem whether he finds a case directly in point or not. Such work requires ability of a high order, incessant study, and a judicial temperament. Few annotators can produce satisfactory work of this kind.

Exhaustive Annotation.

The highest evolution in annotation, and that which the best publishers are more and more nearly approaching, begins with an absolutely exhaustive collection of the cases bearing upon the subject in hand, and a search for the underlying principle which should be applied to its decision. From the cases collected is prepared an elucidation of the principle involved, so clear that the reader will have no difficulty in determining what the law is, and why, setting out each case fully enough to indicate how the principle was applied in it, and just what it is worth as a precedent, indicating the best-reasoned cases, and those decided by the strongest judges, so as to enable the lawyer or judge to examine the fewest cases possible in the preparation of brief or opinion. All cases are so classified, harmonized, and distinguished that the needed one may be found in the shortest time, and if any reason exists why a particular one should or should not rule the one under consideration that reason

plainly pointed out. This gives ample scope for the profound study and constructive ability of the text-book writer, and the exhaustive and painstaking care of the case lawyer, and furnishes to the profession a combination of principle and case which is of the highest value. This is modern annotation in the true sense. By way of emphasis, this kind of annotation may be compared with the work of the digester. A digest paragraph is a mere index of the case for which it is prepared, without any thought of its relation to other cases upon the same subject. It is prepared not to show the principle involved, but the mere accidents of the case as indicated by its facts. The result is that cases based upon the same principle may be so classified as to be found under different titles in the digest. A digest section, therefore, may not only not refer to all the cases which ought to be consulted to know the law with which it purports to deal, but even the cases which it does contain are not prepared for the purpose of showing the law, but to show what the decision was on a particular state of facts. One can gain little more comprehensive knowledge of a subject by reading a section of a digest than he could gain from a book by reading its index. Annotation states the law; a digest shows where one can find the law. A digest is a valuable aid in doing one's own work; annotation does the work for him. Annotation of this last type requires experience and ability for its preparation. Twenty-five years ago the best editors in the country said it was impracticable, and could not be furnished, But when human effort was satisfied with nothing less than its ideal in other lines, progressive editors said, having seen this ideal, we will be satisfied with nothing less. To realize how far they have traveled towards this ideal, it is only necessary to compare annotation produced thirty years ago with the best produced to-day. One buying reports as such should thankfully receive such aids in the form of "annotation" as are furnished him, because he is getting therefrom much help gratuitously, but if he is buying annotation as well as reports he should select that which most nearly approaches the modern ideal above described.

Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer and hence to acquire that mastery should be the business of every earnest student of law. Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries.

—C. C. Langdell.

American and Greek Jurisprudence Compared

BY E. E. CORWIN

Of the Columbus (Ohio) Bar

MEN have asked the questions, Why do we have laws, courts, and attorneys? Are they not a needless expense? We answer: Without them, at least until the millennium has come, all would be chaos. Take away the judicial arm of a state, then neither life, limb, or property would be safe. The more perfect the laws of a nation or people, the higher their civilization, and the greater their happiness. Without law, "might would make right," which would silence the hum of the factory, and the roar of the ponderous Corliss engines, and turn the clock of time back many centuries. "Law," says Dr. Johnson, "is the science in which the greatest powers of the understanding are applied to the greatest number of facts."

"The science of 'Jurisprudence,'" says Edmund Burke, "is the pride of the human intellect, which, with all its defects, redundancies, and errors, is the collected reason of ages, combining the principles of original justice with the infinite variety of human concerns."

This high ideal of law, which Blackstone says "is a rule of action dictated by some superior being," did not always prevail in its purity and fullness, but has been a plant of gradual growth. Thus, in ancient Athens, there was more or less blending of the legislative, executive, and judicial departments of government, in the same persons; while in our country they are distinct, and more or less independent of each other. The bench, the jury, and the bar are the three chief parts of the machinery in the courts of law in the United States, and each have their distinct part to perform.

The judge presides over the court and decides points of law, delivers the charge to the jury, and pronounces sentence in accordance with the findings of the verdict, as rendered by the jury. The lawyers appear before the court for their client, cite the law bearing upon the case, examine and cross-examine the witnesses, argue points of law, make the plea for their clients before the jury and court, and conduct the details of the pleadings and the trial. The party to a suit rarely or never appears before the court without a lawyer, who acts as his advocate. The jury listens to the evidence, and the argument of counsel for each side,—called the plaintiff and defendant,—and the charge of the court, and passes upon the facts. It has nothing to do with the law, except as given by the court in his charge, to assist in their finding a verdict according to the law and the evidence; but its whole duty is to decide what are the facts in any given case.

The trial by a jury of twelve has come down to us from early Anglo-Saxon times. In the United States we also have chancery courts, where both the facts and law are tried to the court alone. The former are called law courts, while the latter are known as chancery courts, or courts of equity.

The law cases can be taken to a higher court, on error alone, while the chancery, or equitable cases, can be taken up on appeal, *i. e.,* tried over in the first upper or circuit court (in Ohio), or on error. In either, in case of passion, prejudice, or error, if substantial rights are affected thereby, the verdict will be set aside and a new trial ordered. By these safeguards and checks, the rights of the individual are more apt to be protected, than under the old Greek jurisprudence.

All these distinctions and safeguards

were wanting in Athens, where the great mass of the legal business was transacted by the dicasts, or jurymen, who decided both the law and the facts, and from whose decision there was absolutely no appeal. Hence the record of the judicial murder of the Athenian generals (one of whom was the son of Pericles), and then the great and good Socrates, the trial, or rather mock trial, of whom, brings sorrow and shame to all lovers of justice, even in this late day. Instead of 12, they had a jury of from 300 to 1,500, according to the importance of the case, and instead of having a judge to instruct the jury in the law, applicable to the case being tried, as in our country, this unwieldy jury, chosen from the ten tribes by lot, acted as judge and jury, *i. e.*, passed on the law and the facts of the case.

No prior indictment was found, to try an Athenian, for any crime known to their laws, which always precedes a criminal trial with us.

The cases or pleadings in Athens were prepared by magistrates (instead of by attorneys, as here), who presided at the trial as chairmen, maintaining order, and putting the question to vote, either by show of hands, a deposit of beans or pebbles or mussel shell or brass ball, according to the nature of the trial, in one of two urns.

The jury in Athens was sworn to impartially try, and a true verdict render, according to the evidence and the law, as they are in the United States. There was no chancery practice known in Athens, which is to temper and mitigate the rigor of the law. A court of equity boldly undertakes to correct or mitigate the rigor, and what in a proper sense may be termed the injustice of law.

For example: Mr. R purchases an acre of ground on Cleveland avenue, just south of the old fence around the Shoemaker school lot, in Columbus, Ohio, and puts $3,000 worth of permanent improvement on said acre, when the school board deed the schoolhouse lot to Mr. S, who, when he has his lot (which is just north of R's said acre lot), surveyed, it runs down on R's lot 60 feet at one end, which would materially change the shape of R's lot, and cause him an irreparable injury. The Shoemaker schoolhouse fence had stood where it was when R purchased his acre, for some thirty years. The strict law of this country, and all the law they had in Athens, would have given Mr. S the schoolhouse lot as surveyed; but our great improvement on this harsh finding and proceedings, that is, our court of equity, says, "No, you are estopped from interfering. You can't disturb Mr. R, he having purchased, in good faith, up to the fence, and improved his said acre of land with permanent buildings; and the south fence of the schoolhouse lot having been looked upon by all parties concerned as the south line of said lot for over thirty years last past." The court thereupon orders and decrees the title of R to the land, up to the said schoolhouse fence, quieted, as against the owner of the school lot, his heirs, and assigns forever.

Another marked distinction was that there was no bar in Athens, though the litigants were at liberty to consult friends or experts in law, and in later times might appear for their client, if they were prevented by illness or other disability from conducting their own cause. But the rule in Athens was for the party to make his own plea, or read one prepared for him. This was the ordinary occupation of a class of distinguished men at Athens, who finally began to receive fees for their services, in preparing the ammunition for the parties making the attack and defense.

This sounds more modern to us, especially the fee part of the arrangement. A gentleman said to me the other day, "that the charge of the light brigade was nothing to compare with the charges of some attorneys in our times." But, like the Irish member of Parliament, "I deny the allegation and denounce the allegator."

The juror in Athens received about nine cents for each day's work, which would probably purchase nearly as much as the $2 per day received by the jurors in our time and country.

In Athens, the vote of the majority of the jury carried the day, while in our courts, the entire twelve jurors must agree, before a verdict can be rendered. In Athens, there appears to have been no

arrangement by which, in case of fraud, deceit, passion, and prejudice, or mishap of any kind, or newly-discovered evidence, a new trial might be had, as it can in our country.

With all its defects, the Athenian courts of justice had many bright sides to them. They were open and aboveboard. There was no stealthy arrest, no hurrying to prison without remedy, or keeping in prison without end, like the "man with the iron mask" was in France under Louis XIV. There was, in Athenian courts, no secret questioning; no hopeless concealment from the public eye. The arrest was in broad day; the trial was in open court; fellow citizens pronounced the verdict, after a defense, in which all freedom of speech was allowed, and the accused was confronted with the accuser.

But of all the countries in the world, the United States has most to be proud in regard to her laws, her courts of justice, and her learned bench and bar, although shamefully maligned by a few.

Take for example, the high-minded, the pure life and keen intellect and legal acumen of Chief Justice Marshall, how eloquently he defended piety and religion, at the country inn, while on his circuit, as a judge, in early times. Lincoln, Chase, Webster, Clay, and a long galaxy of our country's brightest and purest intellects could be added to the list, if time would permit; of all of whom it can be truly said:

"No orphan's cry wounded their ear,
Their honor and their conscience clear,
Thus may we calmly meet our end,
Thus to the grave in peace descend."

Furled Battle Flags

[These soul-stirring stanzas tell the story of the battle flags treasured in a state capitol.]

Nothing but flags, but simple flags,
Tattered and torn and hanging in rags;
And we walk beneath them with careless tread,
Nor think of the hosts of the mighty dead
That have marched beneath them in days gone by,
With a burning cheek and a kindling eye,
And have bathed their folds with their life's young tide,
And dying, blessed them, and blessing, died.

Nothing but flags; yet, methinks, at night
They tell each other their tale of fight;
And dim specters come, and their thin arms twine
Round each standard torn, as they stand in line,
As the word is given—they charge, they form,
And the dim hall rings with the battle's storm;
And once again, through smoke and strife,
These colors lead to a nation's life.

—Moses Owen.

"A landing with a view to operations against New York may be made in Massachusetts or Connecticut, New Jersey or Long Island. In the first case, New York might be captured only after a long campaign; in the second, decisive results would be secured in a brief period; in the last case, the issue might be decided possibly in a single battle. . . .

"Any force which attempted to defend the city by occupying it would be doomed to disaster. If defeated on Long Island, the troops must ultimately evacuate the city, as Washington did, retreat to the north, and continue to fight in the open, or submit to capture in an attempt to hold the city.

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Editorial Comment

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Edited by Asa W. Russell.

Warfare Under the Sea

The perfecting of submarines goes steadily forward. The larger craft of this type are now armed. Each year shows an increased cruising radius, both on the surface and submerged; and it is thought that submarines should now be able to cross the Atlantic or cruise in the West Indies under their own power. They may also be able to handle mines now that they can remain several hours under water and can be submerged to a depth of 200 feet with a full crew on board.

The importance of this type of vessel and the unsatisfactory nature of earlier experiments has been commented on recently by the New Orleans Picayune as follows:

"Twenty years ago and more the people of the United States read Jules Verne's story, 'Twenty Thousand Leagues under the Sea,' and believed that it would lead to some great change in naval warfare.

"There was an idea that submarine iron ships would be made that would not only be entirely safe and be navigated under water to any destination desired, but hostile ships would be blown up, torpedoed, and dynamited before it was known that an enemy was near.

"It is true that the submarine for war purposes has been made, but is a very unsafe contrivance, and there seems to be no assurance that when it once dives under water that it will ever come to the surface again. And although every naval nation has some, it does not appear that the war submarine ever accomplished any useful purpose or did any service in the defense of the nation to which it belongs.

"Although the idea of submarine attack has not been entirely abandoned, far more attention is being given to aerial warfare, which, however, is not destined to bring any reliable results, and for war on the sea the submarine will finally accomplish something practical.

"But in order to reach such results it will be necessary to make the submarines both safe and manageable. There must be no difficulty in accomplishing the dive and resurrection acts with certainty, and in being able to keep the vessel under water for any time necessary, with entire comfort to all on board. There must not only be condensed air stored up in reservoirs, but there must be chemical means to generate at need the oxygen and nitrogen required to furnish our respiration medium.

"These remarks are suggested in connection with the announcement that Russia is about to build a submarine cruiser of 5,400 tons displacement and to be

fitted for considerable voyages under the sea. It is to be nearly ten times as big as our 500-ton submarine, and if it should possess some of the qualities and capacities of Verne's fictitious vessel it will be able to work a revolution in naval warfare.

"Whenever it shall be possible to sail under a ship's bottom and attach dynamite bombs to her keel, unknown to those on board, or to ram and torpedo them from below, the shock being the first intimation of the presence of an enemy, naval warfare will be attended with vastly more risks than at present, and a few submarine cruisers will be able to meet in a most formidable manner the greatest surface war fleets."

The Fear of Invasion

In a recent article in "The Independent," Mr. Andrew Carnegie, in discussing "The Baseless Fear of War," attempts to show the absurdity of taxing the people for military armaments under the pretext of averting a possible invasion. He says: "To name our probable invaders and describe their means of invading us would banish all ground for anxiety. Think of a European power having to transport an army and its supplies across the Atlantic to attack us, always keeping in mind the question why and with what object. . . . It would possibly be our best policy to invite our invaders to land; guide them into the interior as far as they would go—getting in they would find easy, but when it came to the question how they would get out it would be another story, surrounded, as they would be, by hundreds of thousands of sharpshooters from every quarter of the compass.

"Our Republic, soon to number 100,000,000 of free and independent citizens, our men, old and young, ready with their rifles to do or die for their country if attacked, surely every man, even the narrow professional soldier in his sane moments, must realize that no such hair-brained madness as invasion will ever be attempted. Our harbors could easily be torpedoed before the enemy could prepare and arrive."

This sanguine and somewhat sanguinary view, although consoling to national pride, is naturally at variance with the opinions of some of our military experts. For example: Captain Paul B. Malone, of the United States Navy, has written for the April Century a sketch in which he shows that New York city, the key to the wealth, commerce, and industry of this country, could easily be captured by a foreign power before there was time to concentrate enough trained men there to protect it; and that this capture would cripple the nation more than the combined taking of Boston, San Francisco, and Washington.

He says: "In the Franco-German War, Germany mobilized and concentrated 320,000 men on the frontier of France in eighteen days, and twenty-one days after the issuance of the order for mobilization she had defeated the French in the battles of Wörth and Spicheren. With increased railroad facilities, she could concentrate to-day in much less time. Taking this as a standard of comparison, it is found that on the nineteenth day after the issuance of orders for mobilization, a first-class power, having gained control of the sea, could begin the debarkation of 100,000 men on the southern shores of Long Island.

"What could we do in nineteen days? We have in time of peace 35,000 regular mobile troops available within the United States. There are about 110,000 organized militia, making a total of about 145,000 men available for immediate action. It is not desirable to go into details, but in general it may be stated that to expand these troops to war strength and to supply the infantry alone with the necessary equipment would require more time than the enemy would permit us to take. Without waiting to equip or expand, we could in eighteen days dispose approximately 35,000 men for the defense of Boston, 75,000 for the defense of New York, and 35,000 for the defense of Washington.

"A threat against Boston and Washington would retain the troops in position for their defense, with the result that 75,000 partly trained and partly equipped men would meet 100,000 highly trained and perfectly equipped forces of the enemy.

"A landing with a view to operations against New York may be made in Massachusetts or Connecticut, New Jersey or Long Island. In the first case, New York might be captured only after a long campaign; in the second, decisive results would be secured in a brief period; in the last case, the issue might be decided possibly in a single battle. . . .

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While it is a salutary rule that the trial judge should, during the trial, refrain from any unnecessary comments which might tend to a result in this re-

gard prejudicial to any litigant, yet when it becomes unavoidable in the procedure of a trial to impose a fine upon any person connected therewith, it cannot be held that this should of itself cause a mistrial, merely because the occurrence might have some influence upon the minds of the jury.

Accordingly it was held in Grant v. State, — Tex. Crim. Rep. —, 148 S. W. 760, annotated in 42 L.R.A.(N.S.) 428, that an attorney cannot complain of the imposition of a fine upon him for ignoring rulings of the court that he cannot put a certain kind of questions to witnesses.

Bankruptcy — assets — life insurance — cash surrender value. Policies of life insurance on the life of the bankrupt which do not have a cash surrender value available to the bankrupt at the time of bankruptcy as a cash asset are held in Burlingham v. Crouse, Adv. S. U. S. 1912, p. 564, 33 Sup. Ct. Rep. 564, not to pass to the trustee in bankruptcy, under the bankrupt act of July 1, 1898 (30 Stat. at L. 565, chap. 541, U. S. Comp. Stat. Supp. 1911, p. 1511), § 70a, subd. 5, which, though investing the trustee with the title to property which, prior to the filing of the petition, he could by any means have transferred, or which might have been levied upon and sold under judicial process against him, provides that a bankrupt, when the cash surrender value of insurance policies having such value has been ascertained, may pay or secure such sum to the trustee, and continue to hold and own them free from claims of creditors, and that otherwise the policies shall pass to the trustee as assets.

Carrier — injury to shipment — deduction of value — damage. That a consignee is not bound to receive steel shafting so injured in transportation as to be worthless except for old iron, and allow the value upon his claim against the carrier for the injury, if, upon deducting the cost of handling from its value as old iron, the net value becomes too insignificant to count in the practical administration of justice, is held in McGrath v. Charleston & W. C. R. Co., 91 S. C. 552.

The authorities dealing with the right of a shipper or consignee to refuse to accept goods damaged or delayed while in the hands of the carrier are gathered in the note appended to the foregoing decision in 42 L.R.A.(N.S.) 782, and are in accord with its holding that injury or damage to goods, so long as they retain a substantial value, will not authorize refusal to accept them by a consignee or shipper, and the recovery of their full value from the carrier; neither will mere delay afford a ground for refusal to accept.

Contempt — civil — imprisonment by state court. A state court is held in Rothschild v. Steger & Sons Piano Mfg. Co. 256 Ill. 196, annotated in 42 L.R.A. (N.S.) 793, to have power to impose a fine and imprisonment for a definite term for contempt in violating a prohibitory injunction of a civil nature, where the fine in such cases is regarded as a penalty inuring to the public, although the Supreme Court of the United States has ruled that a contempt proceeding in such case was a mere private remedy for which imprisonment for a definite term cannot be imposed. There is a decided conflict of authority as to whether contempt proceedings in the class of cases under discussion are civil or criminal. That the decision of the United States Supreme Court in the Gompers Case has not settled the question so far as the state courts are concerned is apparent from the refusal of the court in the foregoing case to follow that decision. It may be said that this seems to be the only case in which the point as to whether or not the decision of the United States Supreme Court in the Gompers Case is controlling upon the state courts has been discussed, but there seems to be no valid ground upon which to base a contention that that decision is binding as regards state courts.

Contempt — spite fence — interference with justice — removal. The erection of a spite fence to compel an adjoining property owner to abandon a suit instituted to enjoin the maintenance of a nuisance on the property of the one who erected it is held in Wilson v. Irwin, 144

Ky. 311, a contempt of court, and its removal will be ordered.

The few cases on the subject are gathered in the note appended to the decision in 42 L.R.A.(N.S.) 723.

Although the court was doubtless right in holding the defendant in contempt of court for the conduct complained of, the method there adopted of punishing such contempt is, perhaps, a new departure in this branch of the law, when it is remembered that fine or imprisonment, or both, are the well-accepted punishments for such offenses.

Continuance — defendant hopelessly ill. The illness of a party which prevents his attendance at the trial is generally considered ground for a continuance, where it appears that his presence is indispensably necessary and there is hope for an early recovery to health. And in criminal prosecutions it is generally held that illness of an accused which may prevent him from properly presenting his defense or rendering the assistance to counsel that he otherwise would do furnishes a reasonable ground for a continuance.

A motion for a continuance because of the illness of a party is, however, addressed to the sound discretion of the trial court,—a discretion with which the appellate court will not interfere, unless it appears that it was abused to such extent that prejudice or injury results.

It is held in Rose v. Monorch, 150 Ky. 129, annotated in 42 L.R.A.(N.S.) 660, that a further continuance should not be granted because of the illness of a nonresident defendant having knowledge of the facts necessary to the defense, so that he will not be able to attend the trial or give his deposition, if the case has been continued for a year on that ground and there is nothing to show that he will ever be any better.

Contract — for detection of crime — validity. A contract by which one undertakes for a contingent fee to detect larceny or embezzlement among the employees of his employer, and apprehend persons accused and bring them before the employer, with proof that the stolen property is in their possession, is held in the Wisconsin case of Manufacturers' & M. Inspection Bureau v. Everwear Hosiery Co. 138 N. W. 624, annotated in 42 L.R.A.(N.S.) 847, to be void as contrary to public policy.

But one additional case has been found which involved a contract to induce the detection of offenses as distinguished from the collection of evidence to fasten a particular offense upon some person; and that case likewise involved stipulations for contingent compensation, which were held invalid.

Corporations — reorganization — validity as to creditors — participation by stockholders. The reservation by the old stockholders in an agreement for the reorganization of an insolvent railway company of a stock interest in the new company, which was to and did purchase the railway property at a foreclosure sale made pursuant to the agreement and under a consent decree, although free from fraud, is held in Northern P. R. Co. v. Boyd, Adv. S. U. S. 1912, p. 554, 33 Sup. Ct. Rep. 554, to leave the property still subject to the claims of nonassenting unsecured creditors of the original company, who were not parties to the foreclosure, nor made such by notifying creditors by publication to prove their claims.

County — power to collect tolls — cost of bridge. Generally speaking, a county, municipality, or town cannot erect a toll bridge or build a toll road, or make any charge to the traveling public for the use of its roads or bridges, unless specifically so authorized by its charter or by legislative grant, or unless authority to do so can be reasonably implied from the powers specifically granted.

The case of Breathitt County v. Hammons, 150 Ky. 502, annotated in 42 L.R.A.(N.S.) 836, holds in conformity to the general rule that a county has no inherent power to collect tolls for the use of a bridge which it has erected, even to defray the expense of the erection.

Damages — alienation of affections — excessive verdict. Courts will seldom interfere with the finding of the jury in actions for criminal conversation or alienation of the affections of a spouse,

for the reason that there is no method of determining exactly the proper pecuniary compensation which should be awarded. Therefore unless it is apparent that the jury was influenced by prejudice and passion, its award will seldom be interfered with.

In the Washington case of Phillips v. Thomas, 127 Pac. 97, a verdict for $35,000, reduced by the court to $25,000, for alienation of the affections of a man fifty years old who had been living separate from his wife and paying such attention to other women as to indicate little affection for her, was held so grossly excessive, as to indicate such a prejudice on the part of the jury as to make it unjust to hold defendant bound by any of its findings.

The cases on excessive damages in actions for alienation of affections or criminal conversation are gathered in the note accompanying the foregoing decision in 42 L.R.A.(N.S.) 582.

Damages — breach of contract to purchase — resale — market. That resale for the purpose of fixing damages for breach of a contract to purchase the products of a mine need not be made in the market where delivery was to be made under the original contract is held in White Walnut Coal Co. v. Crescent Coal & Min. Co. 254 Ill. 368.

The general rule, as disclosed by numerous authorities, is that the vendor, acting in good faith in the matter, may exercise a reasonable discretion. Under ordinary conditions, however, where the goods are at the place of delivery at the time the purchaser refuses to receive them, the vendor is entitled to and should resell them on the former's account at that place.

The decisions on resale to fix damages for refusal of purchaser to accept goods are collected in the note accompanying the foregoing case in 42 L.R.A.(N.S.) 669.

Eminent domain — use of property in road work — validity. Subjecting, under penalty, all animals and implements suitable for road work in the county, to that duty a certain number of days each year, with an option to pay money in lieu of furnishing the stock or implements, is held in the Alabama case of Toone v. State, 59 So. 665, to violate a constitutional provision forbidding the taking or applying to public use of private property without just compensation.

No similar case has been found involving compulsory use in road work of animals and implements suitable therefor. In a few instances, however, as appears by the note accompanying the foregoing decision in 42 L.R.A.(N.S.) 1045, the question has arisen as to the right to make compulsory use of materials in road work.

Entireties — lien on expectancy — right to convey. The courts are not in harmony upon the question whether a lien may be obtained upon the interest of one spouse in property held by the entirety, without the consent of both, although the weight of authority and the better reason deny this right, where, under the so-called married woman's act, the husband no longer has the right to the possession and control of the property of the wife.

The decision of Beihl v. Martin, 236 Pa. 519, is an important one on this question. It lends support to the majority doctrine, and holds that the expectancy of survivorship of a man holding an estate by entireties with his wife is not subject to a lien in favor of his individual judgment creditors, which will prevent a good title to the property from passing by a joint deed of the owners. It excepts, however, from the operation of the doctrine the rule of Fleck v. Zillhaver, 117 Pa. 213, holding that an inchoate lien may be obtained upon entirety property, although based upon a claim against only one of the tenants, which lien may be enforced if the debtor tenant survives so that the entire property vests in him as survivor. But an important limitation is placed upon this decision by Beihl v. Martin, in that the court holds that this inchoate lien cannot deprive the spouse who is not a party thereto of one of the valuable and important attributes of the ownership of property, —the right to sell or otherwise dispose of it with the consent of the other spouse, and that hence the lien may be defeated by a sale of the property by the husband

and wife, and therefore such an inchoate lien upon the right of one of the tenants does not render the title of the tenants unmarketable.

The recent decisions on the subject are gathered in the note appended to the report of the Beihl Case in 42 L.R.A. (N.S.) 555, the earlier adjudications having been collected in a note in 9 L.R.A.(N.S.) 1026.

Evidence — comparison of odors. In 1 Wharton on Criminal Evidence, 10th ed. § 459, it is said: "Opinion, so far as it consists of a statement of an effect produced on the mind, becomes primary evidence, and hence admissible whenever a condition of things is such that it cannot be reproduced and made palpable in the concrete to the jury. Eminently is this the case with regard to noises and smells."

So, it is held in the Kansas case of State v. Buck, 127 Pac. 631, annotated in 42 L.R.A.(N.S.) 854, that to identify a substance administered as a medicine, persons who were present when it was given, and who described it as having a strong, disagreeable odor, may be allowed to compare the odor of the liquid so given, with the contents of a bottle produced on the trial, and testify whether the smell is the same.

Evidence — memorandum on check stub — object of payment. By the weight of authority, check stubs are not admissible in evidence. It is considered that they are not books of account, and that, even if so viewed, they fall within the old objection against entries relating to cash payments.

The South Carolina case of Wells v. Hays, 76 S. E. 195, in conformity with this view, holds that a memorandum on the stub of a check, that it was intended as payment upon an indebtedness to the payee's principal, is not admissible in evidence in an action by the principal to enforce payment of such indebtedness.

The admissibility of memoranda on check stubs is the subject of the note accompanying the foregoing decision in 42 L.R.A.(N.S.) 727.

Executor and administrator — widow's support — allowance for wrongful death of husband. The first case discussing the question whether a "widow's allowance" may be deducted from a fund recovered for damages for wrongful death, before its distribution, seems to be the North Carolina case of Broadnax v. Broadnax, 76 S. E. 216, 42 L.R.A.(N.S.) 725, holding that a widow is not entitled to her year's support out of a recovery for the wrongful death of her husband, under statutes providing for such support out of the crop, stock, and provisions, the balance to be made up from the personal estate of the deceased, and requiring the distribution of such recoveries as of personal property in case of intestacy.

Insurance — disease — fainting spell. A shock and fainting spell produced by entering into a swimming pool, which results in drowning, is held in the Iowa case of Clark v. Iowa State Traveling Men's Asso. 135 N. W. 1114, not to relieve an accident insurance company from liability on its policy for the death, on the theory that the death resulted partially or indirectly from "disease or bodily infirmity," within the meaning of an exemption clause in the policy.

As appears by the note accompanying this decision in 42 L.R.A.(N.S.) 632, recoveries have been allowed on accident policies in cases where the insured was drowned during an attack of disease or unconsciousness, notwithstanding the policies excepted death resulting from natural disease, etc.

Thus, in Winspear v. Accident Ins. Co. L. R. 6 Q. B. Div. 42, it was held that drowning in a brook while in an epileptic fit was within the provisions of a policy insuring against injuries caused by "accidental, external, and visible means," although the policy also excluded liability in case of death "from natural disease or weakness or exhaustion consequent upon disease."

But it has been said that accidental death by drowning is caused indirectly by disease, within the meaning of an exception in an accident policy against death caused "directly by disease," where the drowning results from a fall into the water, which was caused by disease.

Manufacturers' Acci. Indemnity Co. v. Dorgan, 22 L.R.A. 620, 7 C. C. A. 581, 16 U. S. App. 290, 58 Fed. 945. In this case, however, the insured, when unconscious, having fallen into the water and drowned, it was held that a fainting spell produced by indigestion or lack of proper food, which was a mere temporary disturbance or enfeeblement, was not a "disease and bodily infirmity," within the meaning of the policy.

Judgment — collateral attack — decree of probate. It is usual to say that where the probate court had jurisdiction, its decree of probate is not subject to collateral attack (though in some jurisdictions this rule is modified by statute, particularly where a distinction is made between the effect of probate as to real, as distinguished from personal, property).

The application of the rule where there may have been defects not appearing on the face of the record is not, in general, attended with difficulty. And where it appears from the record that a usual element of validity is not present, and the statute permits probate without it under certain circumstances, the presence of these circumstances in general will be presumed. But where, on the face of the decree or on the face of the will, a vital defect in the will appears, the question of the effect of the decree when collaterally attacked is unsettled, the few cases where it has arisen showing marked differences of opinion in the courts on the subject.

In the Alabama case of Blacksher Co. v. Northrop, 57 So. 743, annotated in 42 L.R.A.(N.S.) 454, it was held that a decree showing on its face that the will which it admits to probate was not attested as required by statute is subject to collateral attack, since there was an absence of jurisdiction to admit such an instrument to probate.

The court lays stress on the fact that the invalidity of the probated instrument, which consisted in the fact that the will was attested by only one witness when the statute required two, appeared on the face of the decree, so that it was not necessary to look to the probated instrument itself to discover such invalidity.

Landlord and tenant — duty to protect wall of building — adjoining excavation. It may be stated to be the well-settled rule of law that the landlord is not liable in damages to a tenant for injuries arising from the wrongful acts of third persons who do not claim by title paramount, which affect the leased property, at least in the absence of statute or express covenant or stipulation in the lease. Some exceptions and qualifications, however, have been made to this broad rule.

In King v. Cassell, 150 Ky. 537, annotated in 42 L.R.A.(N.S.) 774, it is held that a property owner who lets the different floors to different tenants is not under an obligation to keep the foundations of the building in a safe condition, which will render him liable for injury to the property of a tenant through the fall of a wall due to excavation by a stranger on adjoining property.

Larceny — single transactions — property of different persons. The clear weight of authority is to the effect that the stealing of several articles of property at the same time and place, as one continuous act or transaction, may be prosecuted as a single offense, although the property belongs to several different owners.

The Iowa case of State v. Sampson, 138 N. W. 473, annotated in 42 L.R.A. (N.S.) 967, holds that one who takes from different receptacles in the same room, as one continuous transaction, a watch belonging to one person and money belonging to another, can be convicted of but one offense.

Libel — debt — notifying debtor's employer of nonpayment. Some of the early English courts made the question whether an imputation of want of credit was actionable depend upon whether the plaintiff required credit in his vocation or business.

Similarly the Maryland case of Stannard v. Wilcox & G. Sewing Mach. Co. 84 Atl. 335, annotated in 42 L.R.A. (N.S.) 515, holds that writing a nonresident employer of the resident manager of a business, for the purpose of assisting in the collection of a debt, that the manager's wife had bought property for her private use for which she and the man-

ager refused to pay according to contract, and that a civil suit would be brought against the manager unless payment was made, is not actionable *per se*.

Money received — overpayment of check — action by drawer. The drawer of a check for a specified number of cents which is cashed by mistake as calling for that number of dollars, is held in the Oregon case of Wagener v. United States Nat. Bank, 127 Pac. 778, annotated in 42 L.R.A.(N.S.) 1135, entitled to maintain an action for money had and received against the payee to recover the difference between the amount called for and that collected by him.

This point seems to have been discussed in but very few cases, and among these there is a conflict.

Municipal corporation — ordinance — motor cycle — tank riding. A provision in a general municipal ordinance regulating the use of motor vehicles, that "it shall be unlawful for any person operating a motor cycle to carry another person on said machine, in front of the operator," is held in the Nebraska case of Re Wickstrum, 42 L.R.A.(N.S.) 1068, to be general with respect to all members of the class affected, to be based upon a reasonable classification, and to be a valid exercise of the police power of the city, in protecting the safety of travelers on the city streets and persons carried on motor cycles.

This seems to be a case of first impression, as to the validity of a statute or ordinance prohibiting any person operating a motor cycle from carrying other persons on said machine, in front of the operator, commonly known as "tank riding."

Municipal corporation — power to license elevator operator. The Wisconsin case of Chain Belt Co. v. Milwaukee, 138 N. W. 621, seems to be one of first impression upon the question of licensing elevator operators. It holds that power to license elevator operators is not conferred upon a municipal corporation by the "general welfare clause" of the charter, including special provisions authorizing the prohibition of insecure or unsafe buildings and the use of buildings not provided with ample means for safe and speedy egress therefrom, and the prevention of dangerous construction and condition of apparatus used in and about any building.

This decision is accompanied in 42 L.R.A.(N.S.) 899, by a note on the validity of regulations concerning elevators and hoistways.

Officers — money or property — liability to account. While there are numerous cases upon the duty of a public officer to account for funds placed in his hands, there is a dearth of authority upon the precise question presented in Topeka v. Stahl, 86 Kan. 681, 42 L.R.A.(N.S.) 697, as to the duty of an officer to account for money or property he has recovered as the result of litigation.

That case holds that where an officer seizes intoxicating liquors upon a warrant issued under a city ordinance authorizing their destruction upon certain conditions, and, after surrendering them upon an order of delivery in replevin, obtains a judgment for their value in default of their return, he holds such judgment for the benefit of the city, and upon its collection by him, he becomes liable to the city for its amount, less any expenses he may have necessarily incurred in obtaining it.

Telephone — farm line — transfer of farm — effect on interest. A warranty deed of a farm and its appurtenances is held in the Iowa case of Cantril Teleph. Co. v. Fisher, 138 N. W. 436, annotated in 42 L.R.A.(N.S.) 1021, not to carry the right of a grantor as a member of a telephone company, each member of which had a right to place a telephone in his house, and to give the purchaser of his farm the first chance to purchase his interest, after which the company itself should have the right.

No other case has been found passing upon this question, whether a conveyance of real property, as a matter of law, carries to the grantee a grantor's right to telephone service.

Waters — embankment — assisting construction — estoppel. In a suit for flood

damages resulting from a negligent construction or maintenance of a bridge and embankment across a stream and the adjacent lowlands, the fact that plaintiff, as a subcontractor, put in place part of the dirt embankment, is held in the Oklahoma case of Chicago, R. I. & P. R. Co. v. McKone, 127 Pac. 488, not to operate as an estoppel against him in a suit based upon negligent construction and maintenance, where it is not shown that he possessed any knowledge, experience, or skill in engineering, or as to the suitableness or sufficiency of such construction, but merely worked under the direction and specifications of defendant's engineers.

This seems to be the only reported decision in which the complaining party was but "a blind uncomprehending instrument" executing mechanically another's will. It is accompanied in 42 L.R.A.(N.S.) 709, by a note presenting illustrative cases.

Witness — impeaching own — criminal law. It is held in Andrews v. State, — Tex. Crim. Rep. —, 141 S. W. 220, to be error for the prosecuting attorney to ask his own witness if he had not stated specific facts to him out of court different from those testified to by him, accompanying the question by the assertion that he had done so, for the alleged purpose of impeachment, and by so doing get before the jury evidence that could not be secured otherwise; and it is not cured by the subsequent withdrawal of the evidence from the jury.

The rule is well settled that a party cannot impeach a witness whom he has voluntarily called or made his own, unless the witness has given affirmative testimony injurious to the party's case, and has not merely failed to testify to facts which the party sought to prove by him.

The right to impeach one's own witness because he has not testified as expected, where his testimony is not affirmatively injurious, is discussed in the note accompanying the foregoing decision in 42 L.R.A.(N.S.) 747.

Witnesses — self-crimination — use of bankrupt's books. That the books of a bankrupt which have been transferred to the trustee in accordance with the bankrupt act of July 1, 1898 (30 Stat. at L. 565, chap. 541, U. S. Comp. Stat. Supp. 1911, p. 1511), § 70, may be produced before the grand jury and before the petit jury at the trial of the bankrupt for concealing money from the trustee, without infringing the bankrupt's constitutional privilege against self-crimination, is held in Johnson v. United States, Adv. S. U. S. 1912, p. 572, 33 Sup. Ct. Rep. 572.

Recent English and Canadian Decisions

Carriers — injury to passenger alighting from vestibuled train. A passenger seated near the rear end of a day car in a vestibuled train, behind which was a sleeping car, on arriving at his destination about midnight, went out of the door of the day car, at the rear end, upon the vestibuled platform, and, there finding the exits closed so that he could not open them, went through the sleeping car and alighted from the train by opening an exit door at the rear. The train having started again, he was injured. It appeared that the exit at the front end of the day coach was open. Upon this state of fact it was held in McDougall v. Grand Trunk R. Co. 27 Ont. L. Rep. 369, that the passenger, in the absence of timely information to the contrary, had a right to expect to find the rear exits of the passenger coach open, and that what he did was under the circumstances reasonable, and therefore that the railroad was liable.

Defamation — publication — slander uttered to detectives in plaintiff's employ. Plaintiff finding that reports damaging him in his business were in circulation employed detectives to find out who was circulating them, not telling or asking them to go to defendant. The detectives having obtained defendant's confidence, he uttered defamatory words

concerning the plaintiff. Under these circumstances it was held that the defamatory words were not invited by the plaintiff, with a view to action against the defendant, and there was therefore a publication. Rudd v. Cameron, 27 Ont. L. Rep. 327.

Fraudulent conveyance — voluntary settlement upon wife by husband entering upon hazardous business. That a voluntary conveyance of the bulk of his property, other than that invested in the business, made to his wife by a husband who without previous experience had reembarked in the saloon business, was fraudulent and void as against subsequent creditors, is held in Ottawa Wine Vaults Co. v. McGuire, 27 Ont. L. Rep. 319.

Lien for work done — agreement inconsistent therewith. That a contract by which the plaintiff agreed to manufacture lumber out of logs furnished by the defendant at a certain price per thousand feet, the plaintiff to deliver the lumber, etc., as fast as defendant could take it, and "settlements to be made the tenth day of each month for the preceding month's saw bill," is inconsistent with a right of lien for the price of sawing, is held in Bathurst Lumber Co. v. Nepisiguit Lumber Co. 41 N. B. 41.

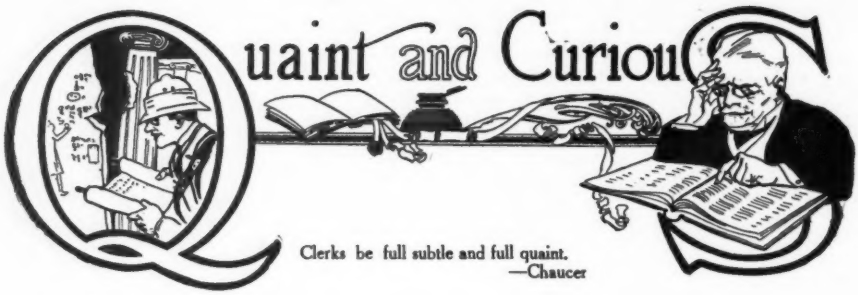
Maintenance — common interest — trade union — slander of officer. That the payment by a labor union of costs in an action brought by one of its officers for a slander of his integrity in office is maintenance, although the officer is slandered by way of his office as well as personally, and the union is adversely affected by the slander, is held in Oram v. Hutt [1913] 1 Ch. 259, upon the ground that the union had no legal common interest in the suit.

Negligence — attractive nuisance. The owner of an unfenced plot of vacant land, not adjoining any public highway, but accessible by a path, and where children resorted to play, as found by the jury, with the knowledge and permission of the owner, upon heaps of sand, stone, and other materials which were from time to time deposited there, was held in Latham v. R. Johnson & Nephew [1913] 1 K. B. 398, not to be liable to a child of two years who had gone unaccompanied upon the land, and whose hand was crushed by a paving stone, a cartload of which had that morning been dumped there in an irregular heap; the jury having found that there was no implied invitation to children of so tender an age to come except under the care of some responsible person; and the pile of stones not being an allurement, or trap, or an inherently dangerous object, so as to bring the case within the doctrine of the turntable case (Cooke v. Midland Great Western Railway of Ireland [1909] A. C. 229 [1909] 2 I. R. 499, 78 L. J. P. C. N. S. 76, 100 L. T. N. S. 626, 25 Times L. R. 375, 15 Ann. Cas. 557).

Principal and agent — money borrowed by agent without authority — effect of lender's knowledge. That the rule that a principal is liable for money borrowed by his agent acting without authority to the extent of which he has received the benefit thereof is applicable even though the lender knew of the agent's want of authority, is held in Reversion Fund & Ins. Co. v. Maison Cosway [1913] 1 K. B. 365.

Sales — affirmation — warranty. The rule is laid down in Heilbut v. Buckleton [1913] A. C. 30, that the question whether an affirmation made by a vender at the time of sale constitutes a warranty depends on the intention of the parties to be deduced from the whole of the evidence; and the circumstance that the vender assumes to assert a fact of which the purchaser is ignorant, though valuable as evidence of intention, is not conclusive.

Wills — construction — release of "debts" as including right of principal to indemnity by surety. That, since a surety's equitable right to be indemnified by his principal does not create any debt before the surety has been called on to make good his guaranty, a release of "all debts" to the principal debtor by the surety's will does not affect the right of the executors to claim indemnity for claims under the guaranty made by the creditor after the testator's death, is held in Re Mitchell [1913] 1 Ch. 201.



Wars Over Trifles. If we are to judge (says the London Globe) by the number of armed conflict that have had their origin in the most trivial pretexts, the dogs of war are held upon the frailest of leashes. For instance, when a certain Venetian ambassador was once asked by the Turkish Grand Vizier to ratify a treaty by swearing in the Moslem fashion upon his beard and the beard of the Prophet, he declined, because, as he said, "the Venetians wear no beards."

This remark somehow offended the Turk, who retorted angrily, "Nor do monkeys!" This untimely bit of temper caused the Venetian to tear up the treaty and retire from the conference. The sequel was a war in which 30,000 Christians and four times as many Turks fell.

But the Turks were not the only ones to use blows instead of arguments on the slightest provocation. Some 250 years ago an Emperor of China began a war on account of a smashed teapot.

The owner of it, a high dignitary of the court, considered this article a priceless treasure, and it accompanied the great man on all his journeys. It so happened that when he was traveling through the lawless provinces in the Northwest of China some of his retinue were intercepted by a band of robbers, who found the teapot among the luggage, and carelessly flung it to the ground and broke it. The matter was reported to the Emperor, who was so indignant at his favorite's loss he sent out a punitive expedition, and a long war began, which resulted in the death of 500,000 men.

Nine hundred years ago a party of soldiers from Modena stole a bucket, apparently in joke, from a public well in Bologna, and refused to restore it. Fighting thereupon began between the soldiers of the rival cities, and a war was started that devastated a large part of Europe.

Equally tiny sparks have kindled many other conflagrations. The war between Sweden and Poland, that began in 1654, arose through a fancied slight. The King of Sweden discovered that in a despatch his name and title were followed by only two et ceteras, whereas the name of the King of Poland had three; a declaration of war was the result.

How President Polk Brought on War. Conditions on the Mexican frontier, with the mobilization of American troops at Galveston, said the Kansas City Star, recall the events on that frontier in 1846 that led to war. Under the Constitution, Congress has the sole power to declare war. But President Polk showed that an aggressive chief executive, through his power as commander in chief, can involve the nation in an encounter out of which war may be certain to develop.

The Mexican War followed a message from the President calling on Congress to act since American troops had been attacked on American soil and war existed by the action of Mexico. But it became known a few years ago when Polk's diary was published, that the President had determined on war irrespective of the action of the Mexican troops, and that the encounter proved merely a convenient pretext.

When Texas was annexed there was a dispute over its boundary line. Texas claimed the Rio Grande, Mexico the Nueces, 100 miles to the north. Into this disputed territory Polk had sent General Taylor early in 1846, expecting that the presence there of American troops might bring on an encounter with Mexico as the aggressor.

Meanwhile the President was hoping that he might arrange to buy the Mexican territory that geographically ought to belong to the United States. He appointed John Slidell to negotiate, authorizing him to offer $25,000,000, with the United States assuming the payment of several million dollars in claims due from Mexico. When the Mexican authorities refused to receive Slidell, Polk felt that the time for action had come. He called a cabinet meeting on a Saturday in May, 1846, and told the members he had determined to send a message to Congress on Monday urging war on the ground that Mexico had failed to pay just claims or even to negotiate concerning them.

Every member except George Bancroft, Secretary of the Navy, voted in favor of the message. That night the news reached Washington that a detachment of Taylor's dragoons had been attacked by a Mexican force in April. In his diary Polk records how he stayed at home all day Sunday rewriting his message, and changing the ground on which war was to be declared. The aggression against American troops he felt was a stronger basis for fighting than the unpaid claims.

Congress responded promptly with an appropriation of $10,000,000 and the authorization of a call for 50,000 volunteers. But the war was directly due to the initiative of the President.

Red Tape in India. The precision of organization and discipline that is the very foundation of military life is always a matter of wonder and admiration to the civilian. He may express impatience with Army "red tape," yet he has a lurking regard for this very thing which he condemns, because he knows, vaguely, that it has a reason for being, and that it is good for men generally to be compelled to respect a silent force as powerful and dignified as this is.

Red tape is a serious matter, not to be lightly treated by anyone, soldier or civilian, but the observance of its "code" to the very letter probably never was more complete than in the case of a native officer in India.

This babu, who was in charge of the documents of a certain town, found that they were being seriously damaged by rats. He wrote a letter to the government, informing it of the danger to his records, and respectfully urging it to provide him with weekly rations for two cats to destroy the marauding animals.

The request was granted and the two cats were installed—one, the larger of the two, receiving slightly better rations than the other.

All went well for a few weeks, when the supreme government of India received the following despatch:

"I have the honor to inform you that the senior cat is absent without leave. What shall I do?"

The problem seemed to baffle the supreme government, for the babu received no answer.

After waiting a few days he sent on a proposal:

"In re Absentee Cat. I propose to promote the junior cat, and in the meantime to take into government service a probationer cat on full rations."

The supreme government expressed its approval of the scheme, and things once more ran smooth, and without friction in that department.—New York Press.

A Lawyer's Model "Dun." "_____ 1913. Messrs. _____, Fellow Citizens:

When in the course of human events, it occurs (and such occurrences are frequent) that I am asked by my creditors to contribute to the support of themselves and their families, in order that they may maintain their material existence and continue to do business upon this mundane sphere—I always feel 'touched.'

So sympathetic to such appeals am I, that if I am not in condition to personally respond I call upon my friends

or clients, or both, to aid me in the humane endeavor to relieve distress.

Lately, several of these 'occurrences' have concurred or concatenated, so to speak, and I now, hat in hand, kotow to your honors and beg you to make such exemplification of the spirit of benevolence, hitherward, as to your honors shall seem meet in view of services rendered as per mem. thereof sent you under date of ———— 1913.

And this your orator humbly prays, etc.

A. Necessity, Pro se.
Of Counsel."

Printing of Supreme Court Decisions. All printed copies of United States Supreme Court decisions have been prepared in the same little printing shop for the last seventy-five years. In all that time, so far as anybody knows, there has not been one "leak." And yet the possession of an important decision a day or so in advance might enable one to make a fortune in stock speculation.

The original proprietor of the printing shop did the work himself, taking no chances on the secret getting out through an employee. At his death, the foreman of the shop conducted the establishment for the estate and continued to get the supreme court work. Another man—only the third manager in seventy-five years—is now running the plant. The printing is divided among several employees in such a way that no one has enough of the decision to make any sense out of it. And the final paragraph—the part where the court puts in the "cracker," saying whether the case is reversed or affirmed—is always set up by the manager of the shop himself.

Copies of the decision are turned over to the clerk of the supreme court, to be handed to the news associations as soon as the justice starts to read it from the bench.

But for some reaosn, much to the vexation of the newspaper men, there are never enough copies to go around. Sometimes there is only one copy given out, and the news association favored with that one copy has a brief lead over its rivals in getting the report on the wire.

Negro Duped Lawyers. An old Mississippi negro, with the appearance and deferential air of an ex-slave, after defrauding a dozen of the best law firms of the state out of several thousand dollars, finally was caught at Perry, Oklahoma. He now is in the penitentiary serving a term for getting money under false pretenses. Each of the dozen law firms contributed from $75 to $100 to the negro, John Coleman, or got their friends to advance it to him.

Coleman worked his game on the lawyers because of his ability to state a personal injury damage suit perfect in all its details. He said that December 3, 1912, his son, while driving a buggy for a physician, was run over by a street car on the Muskogee Electric Traction Company's lines and his leg cut off, from which injury he later died in a hospital; that R. D. Long, general manager of the traction company, had offered him $1,500 in settlement, and he wanted legal advice as to whether he should settle or sue for a larger amount. He omitted no detail to make a perfect case in all its legal phases.

The attorneys for the traction company commenced to receive telephone messages from all over the state from widely known law firms, notifying them not to settle the Coleman case until they were consulted, as they represented Coleman. From Oklahoma City, Perry, Shawnee, Chickasha, Wagoner, and Fort Smith came these messages. An investigation was made, and it was found no such accident had occurred.

The old negro would walk into a law office, state his case with utmost precision and detail. He always took off his hat when he addressed a white man, and usually came with a note from a bank, referring him to that particular law firm. The thing that caught the attorneys was the statement that he had been offered $1,500 in settlement. One lawyer in Oklahoma City was not enthusiastic until the negro offered to bring him a possum. That cinched the case then and there, for the lawyer was a Southerner and liked possum.

The negro always closed his interview with the statement that he was entirely out of money and would like to get an advance of $75 or $100, the money to be taken out of the settlement. The money was usually forthcoming, and the old negro would shuffle out, hat in hand, never to return. At Perry the lawyer did not have the money, so he took the negro to a bank, and there Coleman, on the lawyer's indorsement, got $85 by mortgaging a horse and buggy. It was discovered that he really did not own a horse and buggy, and he was arrested before he could get out of town. That was his undoing, for he was sentenced to the penitentiary. Then the lawyers over the state commenced to compare notes and figure up how they had been duped. How many law firms were stung is not known, but an even dozen reported to the Muskogee Traction Company. There were probably as many more who did not report and never will.

Anyone Might Bite. The imprisoned Spanish don with the fabulous hidden fortune and a beautiful daughter, who wants some kindly person (with means) to rescue his gold and daughter, has been outdone, states the Chicago Record-Herald.

The latest "man in distress" has a "legacy" too, but not in hidden treasure. It is a damage claim against a city traction company for injuries which the company has already offered to settle for $4,000, but which is worth more. A dozen Chicago lawyers already have been victims, contributing modest sums of from $1 to $10.

Do the attorneys complain to the police? Not they. They talk about it in whispers, and charge the swindle to "experience."

The swindler has been operating for a month. He is a fairly well-dressed individual, and has a big, fresh scar across his forehead, the result of the "street car accident." He has just been discharged from the hospital, he tells his victim.

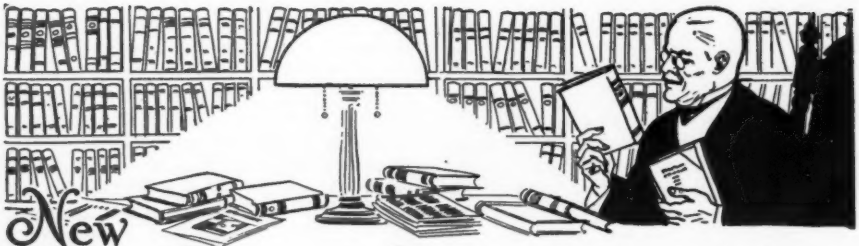
The claim agent, so his story goes, offered him $4,000 as a cash settlement when he was in the hospital, but he thinks his injuries are worth more. He tells a well-defined story of the circumstances surrounding the accident, gives names of witnesses and all other accessories to a bona fide case, and the lawyer-victim immediately scents a "50-50 split" on a damage suit which looks like ready money.

Then comes the sad part of the story. The hospital bills ate up the "injured man's" savings. He is expecting a check in a few days from a relative to push the damage suit, and the retainer will then be forthcoming. In the meantime, could the lawyer please let his client have a loan of a few dollars?

No less than a dozen legal lights have blushingly confessed they "fell" for the story. Not because of the big retaining fee they were promised, of course, but just because it was such a good story.

A Bovine Miracle. In a western state an assistant attorney general, in his brief in the supreme court, summarizes a recent cattle stealing case as follows:

This appellant was convicted in the court below of larceny of nineteen calves which were discovered in a pasture belonging to her, inclosed by a wire fence, and it was the theory of the defense which the stony-hearted jury refused to adopt, that these nineteen calves deliberately forsook their mothers, and effected an entrance either under or through the fence for the purpose ot obtaining the alfalfa which was growing upon the inside. It is submitted that if nineteen calves are possessed of sufficient intelligence to worm their way through or under a barbed-wire fence for the purpose of obtaining alfalfa, the same intelligence would enable them to effect an exit, in response to the lamentations of their bereaved mothers and their own inclination to again derive lacteal sustenance from the maternal udder. There is evidence to show that the appearance of the calves indicated they had been deprived of milk for some time, and the appearance of the nineteen mothers indicated that they were anxious to relieve themselves of the fluid for which calves have a special liking. While it is possible that there have been isolated cases where a calf has penetrated the mystery of a barbed-wire fence, yet the spectacle of nineteen infant bovines in concert successfully solving the problem would be one well calculated to excite the wonder and admiration of gods and men.



New Books and Recent Articles

"Certainty and Justice." By Frederic R. Coudert of the Bar of the City of New York. (D. Appleton & Co., New York.) $1.50 net. Postpaid $1.62.

A series of essays tracing the conflict between the ultra-conservatism of precedent in the interpretation of the law, and the demands of progress in its liberalization and its proper adaptation to the needs of each succeeding generation. They bring out with great clearness the causes that underlie the present restiveness of the public under what is considered a retrograde administration of law, the necessity for a broader comprehension of its principles and purposes, as well as the danger of too radical a disturbance of judicial authority in the adventurous search for immediate change.

In his discussion of the important questions which he treats, the author is consistently progressive, but not unduly radical. He has written in a philosophical spirit and in a charming style. While his lines are replete with learning, they are never dull nor heavy. The lawyer who would obtain a clear insight into the nature of those great forces that are constantly molding our institutions and laws will do well to read Mr. Coudert's book.

"Justice and the Modern Law." By Everett V. Abbott of the Bar of the City of New York. (Houghton Mifflin Co., 4 Park St., Boston.) $1.60 net.

In this able and searching work, Mr. Abbott, a prominent member of the New York bar, considers some of the fundamental problems of the administration of justice in the light of the complex and changing conditions of the present day. With keen insight and wide legal and practical information, he discusses both general principles of equity and the practical problems of justice as related to such far-reaching and vital matters as the enforcement of the Sherman act, the independence of the judiciary, etc.

The four chapters of the book are devoted to the subjects of the Ethical Principles of the Law, the Law as It Is Practised, the Law as It Is Administered, and the Principle of Sufficient Reason. In the consideration of these questions, the following topics are discussed: The General Right to Control Corporations; Rate Legislation; Anti-Trust Legislation; the Rights of the People; Judicial Disregard of the Law; Judicial Insincerity; Judicial Bias and the Substantive Law; the Principle of Alternatives; the Test of the Reductio ad Absurdum, and the Principle of the Argumentative Traverse.

The first chapter is intended to exhibit the ultimate principles of justice as actually existent in the law, illustrated by cases in which they can be readily applied in the present, although they have never been so applied in the past. The second and third chapters are intended to exhibit something of the obstacles by which the progress of justice is impeded. They exhibit both the ignorance and the disingenuousness which enter into the administration of the law and which are still to be overcome. The last chapter is intended to suggest practical methods of avoiding error and detecting sophistries in the actual treatment of legal problems. All four chapters are intended to show that justice, that is to say, a real equality in opportunity and a real brotherhood in effort, is much nearer to us as the feasible reality of a hard and work-a-day world than any man dreams.

The Walled City: A Story of the Criminal Insane. By Edward H. Williams, M. D., formerly assistant professor of pathology and bacteriology, State University of Iowa; formerly assistant physician at the Matteawan State Hospital for Insane Criminals; assistant physician at the Manhattan State Hospital for the Insane, etc. Cloth, 12mo., 250 pages, 8 full-page illustrations. $1.00 net. By mail $1.11. Funk & Wagnalls Company, Publishers, New York.

This book, unlike any other,—for general reading,—is written out of expert medical knowledge, but is not a scientific disquisition.

Dr. Williams presents, in a manner not attempted heretofore by a competent writer, a picture of the everyday life of those within the "walled city,"—any hospital for the sick-minded of criminal tendencies. The book deals with the social life of the insane, the amusements provided for them, the care taken to prevent their escape,—these features of their lives being often curiously interesting. Few persons, aside from those directly concerned with the care of the insane, have more than the vaguest conception of what these unfortunates are like, or how they are cared for. Yet this subject is of vital importance to each of us, since the collective population of these institutions is greater than that of all the universities and colleges in the general population. The book will be a revelation to most intelligent readers. It is mainly a straightforward narrative of events, most of which came under the author's personal observation in the last fifteen years. The reader will be surprised to find that the subject, on the whole, is not so gloomy a one as he may have imagined.

Kelley's "Missouri Probate Guide." 4th ed. $6.

"Negligence and Compensation Cases." Vol. 2. $6.50.

Vernon's McIlwaine's "Pocket Digest of Texas Laws." 2d ed. $6.50.

Recent Articles of Interest to Lawyers

Adverse Possession.

"Adverse Possession."—76 Central Law Journal, 391.

Arbitration.

"A New International Court: A Question for the Third Hague Conference."—25 Green Bag, 172.

"Settlement of International Disputes by and between the English Speaking Nations."—22 Yale Law Journal, 545.

Attorneys.

"The Lawyer."—22 Yale Law Journal, 433.

Bankruptcy.

See Insurance.

Banks.

"The Law of Banking."—30 Banking Law Journal, 285, 431.

"Modern Banking and Trust Company Methods."—30 Banking Law Journal, 293, 441.

Bills and Notes.

"The Negotiable Instruments Law."—30 Banking Law Journal, 279, 370.

Buildings.

"'New Buildings.'"—77 Justice of the Peace, 243, 255.

Champerty.

"Champerty and Barratry."—The Fra, June 1913, p. 94.

Commissions.

"Executive Commissions of Inquiry."—13 Columbia Law Review, 500.

Conflict of Laws.

See Insurance.

Constitutional Law.

"The Supreme Court and Its Slanderers. (Power of court to review constitutionality of statute.)"—25 Green Bag, 214.

"Constitutionality of Teachers' Pensions Legislation."—11 Michigan Law Review, 451.

"Freedom of Contract."—38 Law Magazine and Review, 278.

Contempt.

"Law of Contempt."—6 Lawyer and Banker, 73.

Contracts.

"Is the Doctrine of Consideration Senseless and Illogical?"—11 Michigan Law Review, 423; 33 Canadian Law Times, 412.

"Discharge of Contracts."—22 Yale Law Journal, 513.

Corporations.

"The Power of Congress to Enact Incorporation Laws and to Regulate Corporations."—26 Harvard Law Review, 667.

"Shares without Nominal or Par Value."—26 Harvard Law Review, 729.

"The Corporation Bill."—46 National Corporation Reporter, 469.

"Interlocking Corporations."—33 Canadian Law Times, 382.

Courts.

"Some Aspects of Judicial Control over Special and Local Legislation."—47 American Law Review, 351.

"A Plea against Jurisdiction for Diversity of Citizenship."—76 Central Law Journal, 263.

"Oral Arguments before Supreme Court."—6 Lawyer and Banker, 93.

"The Judicial Code of the United States with some Incidental Observations on Its Application to Hawaii."—22 Yale Law Journal, 453.

"American Courts in the Orient."—47 American Law Review, 321.

Criminal Law and Criminology.

"Compulsory Examination of a Defendant Accused of Crime Both before and at the Jury Trial."—20 Case and Comment, 47.

"Mental Types of Juvenile Delinquents Considered in Relation to Treatment."—4 Journal of Criminal Law & Criminology, 83.

"Insanity and Criminal Responsibility. (Report of Committee B of the Institute, concluded.)"—4 Journal of Criminal Law and Criminology, 67.

"The Association Method in Criminal Procedure."—4 Journal of Criminal Law and Criminology, 58.

"A Study of One Hundred Juvenile-Adult Offenders in the Cook County Jail, Chicago, Illinois."—4 Journal of Criminal Law and Criminology, 47.

"The Attorney-General's Fiat. (Rule that law officer of Crown must give his consent to commencement or continuance of proceedings to punish certain offenses.)"—77 Justice of the Peace, 205.

"Criminal Statistics. (England and Wales, 1911.)"—38 Law Magazine and Review, 308.

"The Care of Vicious Women."—The Outlook, May 17, 1913, p. 101.

Damages.

"The Doctrine of Mental Suffering in Telegraph Cases."—76 Central Law Journal, 406.

Divorce.

"Divorce in England, the United States, and Canada."—22 Yale Law Journal, 531.

"The Bases of Divorce."—4 Journal of Criminal Law and Criminology, 30.

Drains and Sewers.

"Once a Sewer not Always a Sewer."—77 Justice of the Peace, 253.

Easements.

"Way of Necessity, How Acquired."—76 Central Law Journal, 371.

Election of Remedies.

"Election of Remedies, a Criticism."—26 Harvard Law Review, 707.

Elections.

"Can Two Propositions be United in One Submission to the Voter?"—47 American Law Review, 392.

Equity.

"The New Federal Equity Rules."—11 Michigan Law Review, 435.

"The New Federal General Equity Rules."—76 Central Law Journal, 281.

Executors and Administrators.

"The Effect of an Executor's Assent."—49 Canada Law Journal, 320.

"The Public Trustee of England."—25 Green Bag, 222.

Extradition.

"Is It Lawful to Bring a Man Back to Pennsylvania by Extradition on the Charge of Desertion under the Act of 1903, to Proceed against Him under the Act of 1867?"—4 Journal of Criminal Law and Criminology, 20.

Fiction.

"Tales Out of Court."—The Outlook, May 24, 1913, p. 208.

Foreign Countries.

"The Land of the Incas."—Scribner's Magazine, June 1913, p. 699.

Gaming.

"Recent Cases on the Law of Betting (Criminal)."—77 Justice of the Peace, 241.

Highways.

"Highways and Culs-De-Sac."—135 Law Times, 2.

"Trees in and Overhanging Streets."—77 Justice of the Peace, 229.

Historical.

"Another View of 'The Hayes-Tilden Contest.' "—The Century Magazine, June 1913, p. 192.

Husband and Wife.

"Time Limit for Summary Proceedings in Respect of Desertion and Persistent Cruelty."—77 Justice of the Peace, 207.

Incompetent Persons.

"Psycho-Medico Aspect of Insanity."—6 Lawyer and Banker, 87.

Insurance.

See also Master and Servant.

"The Regulation and Taxation of Insurance."—20 Case and Comment, 3.

"Progress towards Insurance Reform."—20 Case and Comment, 17.

"The Standard Fire Insurance Policy."—20 Case and Comment, 11.

"The Wisconsin Plan for State Life Insurance."—20 Case and Comment, 8.

"Guaranty Insurance."—20 Case and Comment, 20.

"Liability of Insurer for Loss Caused by Explosion."—20 Case and Comment, 24.

"Reducing the Rights of Members of Mutual Benefit and Assessment Companies by After-Enacted By-Laws."—20 Case and Comment, 28.

"Conflict of Laws as to Insurance Contracts."—20 Case and Comment, 35.

"Life Insurance as Assets of Bankrupt."—20 Case and Comment, 40.

International Law.

"Contractual Claims in International Law."—13 Columbia Law Review, 457.

Intoxicating Liquors.

" 'Old On-Licenses' and the Value Qualification."—77 Justice of the Peace, 217.

Judges.

"The Impeachment of the Federal Judiciary."—26 Harvard Law Review, 684.

"Dissatisfaction with Our Judges."—11 Michigan Law Review, 452.

"The Appointment of Judges and Delegation of Judicial Duties."—49 Canada Law Journal, 313.

Jurisprudence.

"The French Judicial System: Part I.—Civil."—38 Law Magazine and Review, 257.

"The Forum Judicum (Fuero Juzgo): A Study in the Early Spanish Law."—8 Illinois Law Review, 1.

Jury.

"Trial by Jury in United States Courts."—26 Harvard Law Review, 732.

Libel.

"Scandalum Magnatum in Upper Canada."—4 Journal of Criminal Law and Criminology, 12.

Limitation of Actions.

"Statute of Limitations and Mortgages."—49 Canada Law Journal, 290.

Mansfield.

"Lord Mansfield."—1 Georgetown Law Journal, 207.

Master and Servant.

"What Employees Are within Contemplation of the Employers' Indemnity Policies."—20 Case and Comment, 43.

"Legislation Affecting Workmen's Industrial Insurance and Workmen's Compensation Acts."—20 Case and Comment, 51.

Money.

"What Is Money?"—30 Banking Law Journal, 377.

Monopoly.

"Trusts and the Law."—33 Canadian Law Times, 369.

"Amendment of the Sherman Act."—1 Georgetown Law Journal, 218.

Mortgages.

"The Lien Theory of the Mortgage—Two Crucial Problems."—11 Michigan Law Review, 495.

Municipal Corporations.

"Municipal Ownership of Public Utilities."—22 Yale Law Journal, 461.

Negligence.

"Personal-Injury Damage-Cases." — The Fra, June 1913, p. 74.

New Trial.

"The History and Development of the Motion for New Trial and in Arrest of Judgment."—47 American Law Review, 377.

Nuisances.

"Equity Jurisdiction to Abate and Enjoin Illegal Saloons as Public Nuisances."—8 Illinois Law Review, 19.

Officers.

"Compulsory Service in Office."—11 Michigan Law Review, 478.

Patents.

"The Patent System Defended in Congress."—25 Green Bag, 178.

Perpetuities.

"General Testamentary Powers and the Rule against Perpetuities."—26 Harvard Law Review, 720.

Railroad Commission.

"The Chairman of the Dominion Railway Board."—49 Canada Law Journal, 318.

Railroads.

"The Railroad Trespasser."—The Fra, June 1913, p. 77.

Rights.

"Positive Right."—38 Law Magazine and Review, 293.

Taxes.

"Some Problems in Land Values."—38 Law Magazine and Review, 332.

"Inheritance Taxes upon Estates of Non-residents."—49 Canada Law Journal, 273.

"Taxes—and Brotherhood."—The Outlook, May 31, 1913, p. 234.

Treaties.

"The Panama Canal. The Doctrine of Rebus Sic Stantibus."—1 Georgetown Law Journal, 193.

Uniform Legislation.

"Needed: A Uniform Law Merchant."—1 Georgetown Law Journal, 202.

Weights.

"Short Weight."—77 Justice of the Peace, 230.

Witnesses.

"The Impeachment of the Witness."—25 Green Bag, 225.

A Hundred Years of Peace

The anniversaries of important battles are commonly made the occasion of national jubilation, but only by the victorious nation. Next year, however, there will be an opportunity for the celebration of a triumph in which the two countries concerned may join, for they both won, that is the centenary of the signing of the Treaty of Ghent, December 24, 1814. Since then there has been unbroken peace along the Canadian-American boundary, the longest undefended frontier in the world. The British Interparliamentary Union, under the presidency of the Rt. Hon. Viscount Weardale, has expressed its warmest sympathy with the movement which is being organized for the celebration of this hundred years of peace in the United States, Canada, and Great Britain. The city of Ghent is also making preparations to have the event commemorated in the council chamber where the British and American plenipotentiaries negotiated this unusually successful treaty.

Great Britain has been a colonizing nation, and the United States has drawn to its population various and powerful elements from different countries and from under different flags. Therefore, a century of peace between Great Britain and her dominions beyond the sea on the one hand, and the United States on the other, touches directly both the interest and the imagination of every land to which Great Britain's sons have gone, as well as those of every nation from which the present-day population of the United States has been drawn. Such a celebration will not only mark the close of a century of exceptional significance and importance, but it will call attention to an example and an ideal that we earnestly hope may be followed and pursued in the years to come.

Judges and Lawyers

A Record of Bench and Bar

A Lawyer-Soldier of the Union

Major Walter Thorn

DEPENDENT upon his own resources early in life, owing to the death of his father, Walter Thorn, then barely thirteen years of age, became an employee in the office of the then famous dry-goods firm of Bowen, McNamee, & Company, of New York.

MAJOR WALTER THORN

At the age of sixteen, he responded to the call by President Lincoln, for volunteers, and enlisted as a private soldier in the year 1862. During the War he served with the Armies of the Potomac, James, Gulf, and Cumberland, participating in many battles, and being among those present at the surrender of General Lee and his Army to General Grant, at Appomattox courthouse.

In 1867 Captain Thorn was mustered out of the United States service, and, returning to his home, found employment with "The Independent," a well-known weekly paper published in New York, which position he held for some time. Later, he took up the study of law under the direction of Mr. Justice N. H. Clement, of the New York supreme court, and was admitted to the bar in February, 1876.

Major Thorn bears the scars of three wounds received in battle, one from which he was still suffering when he made the daring rescue narrated in the following paragraphs:

The "Dutch Gap Canal" was cut through a peninsula in the James river by General Benjamin F. Butler, and the work was undertaken for the purpose

of avoiding the vessels and other obstructions sunk in the channel by the Confederates to prevent the passing of gunboats, and also to cut off the formidable earthworks and batteries the enemy had erected opposite this point. Realizing that, with these obstructions and batteries passed, Richmond would be opened to our Navy, the Confederates concentrated their fire on the canal, night and day, to prevent its completion, and hundreds of the Union soldiers were thus killed and wounded.

By the beginning of January, 1865, after months of hard and perilous work and exposure, the canal was so far completed that the two bodies of water were separated only by an earthen bulkhead, and this bulkhead had been sapped and galleried and mined, and charged with more powder than was used to blow up the famous "crater" at Petersburg.

On the day set for the explosion of this immense mine, the main body of the Union troops was withdrawn from its vicinity to a place of comparative safety, leaving behind (it was supposed) only the few whose duty it was to light the fuse leading to the powder and then get away; every precaution seemed to have been taken to prevent unnecessary loss of life,—but, as the sequel proved, some had been overlooked.

At last the supreme moment had arrived. The officers had gotten together into a group to discuss the prospects, and all were at the height of suspense and expectations, when one of General Butler's staff officers came galloping madly up to them and excitedly asked, "Has the guard opposite the bulkhead been withdrawn?" being answered, "No!" he exclaimed, "My God! they will all be killed!"

The situation was grasped in a moment, and consternation and horror was depicted on every face; the lives of a score of men were in deadly peril, and the only way they could be apprised of it, and so saved, was from the top of that mined bulkhead with its tons of powder underneath and the fuse already lighted, eating its way to it. There were brave men in that group of officers, men whose courage had been proved in many battles, but to approach the bulkhead under the existing circumstances seemed like going to certain death; the faces of the bravest blanched at the thought of taking such an apparently desperate, hopeless risk, and so there was consternation and hesitation,—but only for a moment—then a young officer, Lieutenant Thorn, darted from the group, and despite the warning cries and calls from his fellow officers, cries of, "Come back, it is too late," etc., ran forward to the bulkhead, climbed to the top, and, with the full knowledge that the powder under his feet was liable to explode at any moment and hurl him into eternity, stood there (the target for a shower of Confederate bullets) until he had warned the guard of its danger and out of harm's way.

Lieutenant Thorn had scarcely completed this self-imposed task, and leaped from the perilous position, when the explosion took place, scattering the earth in all directions and leaving a yawning abyss where he had stood; he had escaped miraculously by a hair's breadth, but was unharmed.

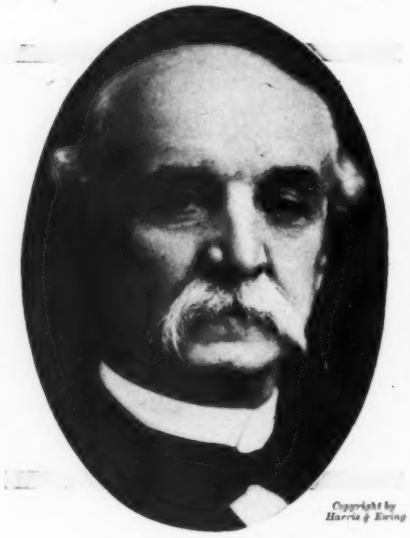
In the words of one of his superior officers: "It was as deliberate an act of self-sacrifice and valor as was ever performed in our own or any other army."

For this act he was awarded a congressional medal of honor, through the War Department, inscribed, "For most distinguished gallantry."

He also received a silver medal from the war committee of Brooklyn, New York, (only five of which were ever awarded) bearing the legend, "Honor to the brave; illustrious deeds a nation's pride," and inscribed, "For especial acts of bravery at Petersburg and Farrows Island, Virginia,"—the former act referred to being the capture of a Confederate major and flag after a desperate fight in which both combatants' revolvers were emptied, and the latter to leading a night attack on the enemy's works before Richmond, which involved the loss of over 50 per cent of his command. The fight for the flag was witnessed by General Grant, who paid young Thorn a compliment (of which he is very proud) by saying, "Well done, lieutenant!"

A Lawyer-Soldier of the Confederacy

THE early life of George Washington Gordon was passed in Tennessee and Texas. In 1859, he graduated from the Western Military Academy of Nashville, after which he took up civil engineering and was thus engaged when the Civil War broke out. He enlisted in the service of the state of Tennessee in 1861, and won promotion rapidly, becoming successively captain, lieutenant colonel, colonel, and, in 1864, was made brigadier general, in which rank he served until the close of the War.



GEN. GEORGE W. GORDON

Though captured three times and once dangerously wounded, General Gordon participated in every engagement fought by his command except those at Nashville, Tennessee, and Bentonville, North Carolina, at which time he was a prisoner at Fort Warren, Massachusetts.

He enlisted into the service of his state because he believed in state sovereignty. He fought for the Confederacy, of which his state became a part, because he believed its cause was just. His record in the war was the most distinguished. At the battle of Franklin, Tennessee, it is stated that he actually rode his horse over the breastworks, wildly cheering his command to follow, in his efforts to annihilate the enemy. He was a soldier all during the War. He never shirked, never faltered, and came out afterwards with a record no one could attack.

He firmly believed in the righteousness of the cause for which he and his brave brethren of the South fought. He never surrendered his convictions that he and they were right. But there was no bitterness in his heart, nor did any feeling of disappointment linger in his breast. He cheerfully accepted the arbitrament of arms as the decree of God, and loved the flag which is at once the protection and the hope of our reunited and common country. He believed that the South was misunderstood. He felt that history, as written, does not fully and faithfully record the events leading up to and the causes which brought about the War between the states, and he feared that future generations might misinterpret the true motives and purposes of the southern people and their leaders in withdrawing from the Union. In speaking of this a short while before his death, he said that he had for some time been gathering *data* and materials, and that he was contemplating retiring from Congress at the end of his term, in order to devote the last years of his life to writing a school history which would treat of the events that brought about the War from the standpoint of the South, and would place before the young southern generations of

the future the true motives which actuated their forefathers.

After his release from prison in August, 1865, some months after the close of the War, he studied law, was admitted to the bar, and practised his profession until 1883 in the city of Memphis.

This same year, the legislature of Tennessee passed an act creating a railroad commission, and General Gordon was appointed by Governor Bate as one of the commissioners. His service upon this was in line with his high and honest character. The powers of the commission were not very great, but within the limit of those powers he rendered honest and efficient service.

In 1885 he was appointed to a position in the Interior Department of the Federal government and served with honor for four years.

He then returned to Memphis and reengaged in the practice of law until 1892, when he was chosen superintendent of city schools of Memphis. This was a congenial and delightful work. He brought to it a rich equipment of learning and executive ability, and for fifteen years he administered this position with fidelity and to the eminent satisfaction of the people of that great city. In 1907 he was elected to Congress.

It might be said that General Gordon was a type of the old school, but in no sense did he linger amid the ruins of the past or did he pine for departed institutions. At the end of the Civil War, when the South—

> Dropped from her nerveless grasp the shattered spear,
> Closed her bright eye and curbed her high career—

he accepted the decree of battle and met living issues with his face set toward the future, determined in every condition to work and to labor for the interest of his people and the success of the right. He kept abreast of the times, and with a willing hand was ready to do his part in every struggle that involved the interest of his country and the elevation of his people.

The honors conferred upon him by the survivors of that cause to which he devoted his service and his life in his younger days attest how much his comrades honored and loved him. The positions of honor and trust to which he was assigned by his people in his latter years bespeak the trust they placed in him. Those who knew him believed in him and loved him, and his public record bears high evidence that their trust and affection was not misplaced. He did not thrust himself immodestly into affairs. He did not seek to advertise himself. He did not boast of his accomplishments. But with that becoming modesty, that reserve, that reticence that marks always the demeanor of the life of a true gentleman—a gentle man—General Gordon moved with a quiet, dignified reserve that commanded the respect and the reverence of every man who loved nobility of character and admired high-mindedness of purpose. He was modest and brave and generous, a knightly man of a knightly land.

In his devotion to his reunited country, in his zeal for its welfare, in his faith in its future, he represented the most progressive southern view and sentiment of to-day.

At the time of General Gordon's death, in 1911, he was commander in chief of the United Confederate Veterans, an honor which he prized more highly than any of the many that were paid him.

On the 5th of July he arose from his sick bed, over the protest of his physician, and went to the White House to see the President about the appointment of a young gentleman from his district to the Naval Academy, a young Jewish lad in whom he was especially interested. This was probably his last official act. He left that evening or the next for Tate Springs, Tennessee, where he remained until about three days before his death, when, realizing that the end was near, he asked to be carried to his beloved city to die. Arriving there on the 7th or 8th he grew gradually weaker and lapsed into unconsciousness. Late in the afternoon of the 9th he opened his eyes for an instant, and murmured, "Send other couriers, those may be killed," closed his eyes once more, and passed over to join Lee and Jackson and Forrest and all the long line of the Southland's distinguished and beloved dead.

We are indebted to the pages of the "Congressional Record" for this statement of the career of General Gordon.

Death of General Joseph Cooke Jackson

GENERAL Joseph Cooke Jackson, former assistant United States district attorney and a distinguished soldier of the Civil War, whose death occurred May 22, at his home in New York, began his war service on the fall of Fort Sumter, when he was ordered to the staff of General Robert Anderson. He later became second lieutenant of the First New Jersey Infantry, and then captain, aide-de-camp and lieutenant colonel of the Twenty-sixth New Jersey Infantry. He was brevetted colonel for service at Fredericksburg and brigadier general for gallant service afterward.

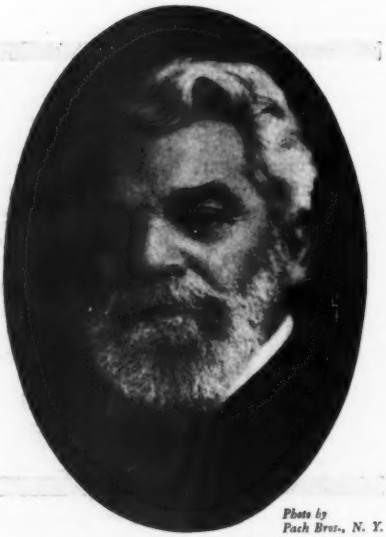


Photo by Pach Bros., N. Y.

GEN. JOSEPH C. JACKSON

General Jackson was one of the few surviving brigadier generals of the Army of the Potomac. He was born in Newark, and his father was the late John P. Jackson, for years president and general manager of the United Railroads of New Jersey, now the Pennsylvania system. On his mother's side he came from one of the oldest New England families, being a descendant of Oliver Wolcott, of Connecticut, signer of the Declaration of Independence.

He was graduated from Yale College in 1857, and entered the Harvard Law School. Later he was graduated from the New York University Law School, of which he was the oldest graduate. He was admitted to the New York bar in 1860, and at the outbreak of the War was appointed aid to General Robert Anderson, then at Fort Moultrie. Afterward he was appointed an aid to General Philip Kearny. He participated in twenty-one battles, including the second Manassas, Seven Days, Antietam, and Fredericksburg. In 1865, President Lincoln brevetted him a brigadier general of volunteers.

After the war General Jackson resumed the practice of law. In 1870 he was appointed assistant district attorney for the southern district of New York. Later General Jackson was counsel for the Society of Political Reform, and also attorney for the New York Bar Association in proceedings to purify the New York bar. He was one of the founders of the Yale Alumni Association of New York city, and its treasurer and vice-president for several years.

Judge Morrow Honored.

The degree of Doctor of Laws was recently conferred by the University of California upon Honorable William W. Morrow, judge of the United States circuit court of appeal, ninth circuit. In conferring the degree President Wheeler spoke of Judge Morrow as follows: "Since 1869 a member of the California bar; representative of the Federal government in important cases; for six years a member of Congress; then six years district judge; since 1897, judge of the United States circuit court of appeal; trustee of the Carnegie Institution; officer of the National Red Cross Society; ready to do all good work in public service; as judge and citizen, humane and just and cheerful."

Frederick P. Stone President Bancroft-Whitney Company

TO aid the establishment of an enlightened and sound jurisprudence in any country is a noble service that any man may well covet even though the public should but little appreciate or recognize its value.

One important, and indeed, really indispensable factor in the accomplishment of this work, though not often thought of as such, is the publication and widespread circulation of those legal decisions and treatises which best embody and teach the fundamental principles and rules of justice. Especially in a nation like ours, made up of many independent jurisdictions, a consistent and harmonious jurisprudence would be impossible if the great judicial decisions in each jurisdiction were not made familiar to the lawyers and judges of all the other jurisdictions. It is not easy to estimate how much the people of the United States owe to law publishers for doing this service.

These reflections are suggested by the recent death of Frederick Peter Stone, president of the Bancroft-Whitney Law Book Company of San Francisco.

Frederick Peter Stone was born in Boscawen, Merrimack county, New Hampshire, March 24, 1841, and died in San Francisco, California, May 7, 1913. At the age of twenty, Mr. Stone enlisted in the New Hampshire battalion of the First Rhode Island Cavalry. He was at once made sergeant and afterward first or orderly sergeant. In 1863 he reenlisted as a veteran, and was made first lieutenant in Company D of the First New Hampshire Cavalry; but, as Captain Parker was absent on sick leave until the close of the war, Mr. Stone always commanded the company. He was twice a prisoner of war, and twice horses were shot from under him, but he himself was never wounded.

In September, 1865, he sailed for California. During his first eight months in the state, he drove a milk wagon at $40 a month, and then entered the old house of H. H. Bancroft & Company at a salary of $75 a month, which was steadily increased until he attained the position which he held at the time of his death.

In 1884, he joined in the partnership of Sumner, Whitney, & Company, law-book publishers, and in 1886 the partnersihp of Sumner, Whitney, & Company joined with the law-publishing department of A. L. Bancroft & Company, forming the great law-book house of Bancroft-Whitney Company.

Among the legal authors secured by Mr. Stone, the benefit of whose work was given to the public, were the Honorables John Proffatt, A. C. Freeman, John Norton Pomeroy, John D. Lawson, Seymour D. Thompson, and Curtis H. Lindley. The most noted works that were contracted for and published during Mr. Stone's career were the "American

Decisions," one hundred volumes; the works of A. C. Freeman, six volumes; "Pomeroy's Equity Jurisprudence," six volumes; "Thompson on Corporations," seven volumes; the works of John D. Lawson, seven volumes; "Lindley's American Law of Mines," two volumes, and the "American State Reports," one hundred and forty volumes.

Mr. Stone was not a club man. He was affiliated with the military order of the Loyal Legion of the United States. He was well known among the law-book publishers of the United States, whom he visited very nearly every year during his mercantile career.

It is not the purpose of this brief memorial notice to weigh critically the respective merits of the various legal publications with which Mr. Stone was connected during his many years of experience as a publisher. But it is interesting to consider how necessarily provincial the legal systems of the various states were, and how little access their judges and lawyers had to the decisions of other states before the publication of the American Decisions and the American Reports. Those reports marked a new epoch of growth toward uniformity of law among the states, and Mr. Stone felt a just pride in the result.

Centenary of the Louisiana Supreme Court

THE supreme court of the state of Louisiana, which recently celebrated its hundredth anniversary, was organized on March 1, 1913, during the régime of W. C. C. Claiborne, first governor of Louisiana, and the first appointee was Domonick A. Hall, whose commission was dated February 22, and who resigned in July of the same year to become United States district judge for Louisiana. While on the supreme court bench Justice Hall found Andrew Jackson, the hero of the Battle of New Orleans, guilty of contempt and sentenced him to a fine of $1,000. This sum, together with earned interest, was later returned to General Jackson by the United States government directly through the efforts of Thomas H. Bentley, Senator from Missouri.

The first decision of the supreme court was handed down on December 1. It was in the case of Bermudez versus Shanez, wherein the court held that "no appeal lies from a judgment of the superior court of the late territory," known as the territory of Orleans. Apparently this decision was the only one handed down by the higher court during the month of March the year of its organization. It is found reported in third Martin's report, on page 1.

Under the Constitution of 1864-68-79 and 1898 the justices of the supreme court were appointed by the governor of the state, but in 1906 an amendment to the Constitution was adopted, which called for the election of the justices by the people and always for a full term of twelve years.

The present members of the court are Chief Justice Joseph A. Breaux and Associate Justices Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville.

Governor Hall, in a magnificent address, said in part: "Looking back to the days of Matthews, Martin, and Porter, and recalling the part the supreme court had played, no Louisianian need be ashamed of its record. Perhaps no court has had more difficult problems, and its decisions have had an influence in molding the jurisprudence of other courts that is accorded but to few courts of this Union."

"Nowhere in the world has the judge been crowned as he has been in America. Here he has been intrusted with power given to no other man. It has been his

province and duty to protect the independence of the three great departments of our national as well as state governments, and to preserve the rights and liberties of the people. The people have bowed to his decision, and have honored him. They have forgiven some human lapses and accepted some flagrant departures from the right as honest errors.

"In their hearts they have transferred dignity and look on with indifference while the people complain. The permanence of our free institutions depends upon the confidence the people have in the incorruptibility of their courts. It is to the courts that they must go for an interpretation of their organic as well as statute laws, and for the vindication of their private rights. 'In despotic governments,' says Montesquieu, 'there are

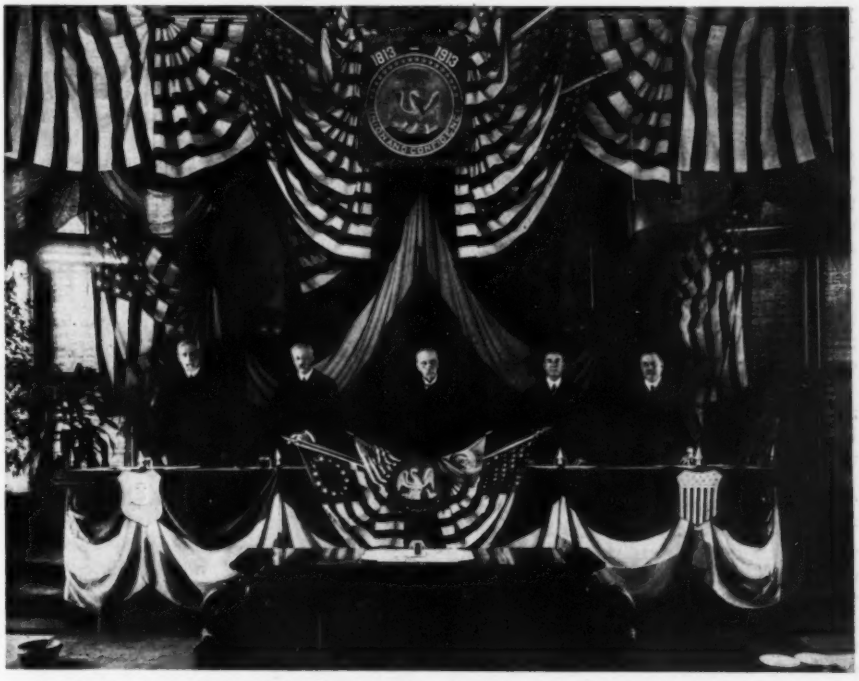


PHOTO OF LOUISIANA SUPREME COURT TAKEN ON OCCASION OF CENTENARY CELEBRATION.

'the divinity that doth hedge a King' to the judge, and marched forth satisfied with the general result. No man has so enjoyed their homage. Has he, the judge, in any measure lost this confidence and respect? This is a question which, at such a time as this, should arouse serious thought.

"If a change has come or is coming over the people there must be causes, and the members of the judiciary should seek carefully to ascertain and remove the sources of irritation. Judges cannot draw around themselves their robes of no laws; the judge himself is his own rule. . . . In Republics the very nature of the Constitution requires the judges to follow the letter of the law; otherwise the law might be explained to the prejudice of every citizen in cases where their honor, property, or life is concerned.'

" 'The fierce white light that beats upon a throne' is but as a candle to the searchlight that throws its rays upon the bench. It penetrates the gown, the garment, and through the very bones of the man who expounds the law in high

places. To live in this light and retain the love and respect of the people, and, while speaking with authority, to hold the loyal devotion of the past, a judge must have more than learning or talent or even genius itself. He must have manhood, broad humanity, sturdy honesty, and unswerving devotion to right and justice. Platitudes, pretenses of patriotism, tricks of logic, shrivel in this light like moths. These cannot stand as law in the great forum of the people, any more than in the lesser but more learned tribunals of the bar."

Mr. Charles Payne Fenner, son of Justice Charles E. Fenner, who sat on the supreme court bench for many years, spoke on "The Jurisprudence," and reviewed at length the differences between the judicial system of Louisiana and the other states of the Union. The speaker said: "There is, I think, a very general impression among our common-law brethren that the nature and extent of this difference are much greater than they really are. Their attitude with regard to our courts is well illustrated by a remark attributed to one of the justices of the Supreme Court of the United States, after listening to an argument in a Louisiana case. He is said to have remarked to Judge White, 'Brother White, I think that you had better take that case. I should not like to undertake it. I fear I might be homologated.' The speaker said that it is true that the terminology of the Louisiana jurisprudence differs widely from that of other states, and that the jurisprudence itself differs in some respects radically from that of the common-law states, but 'to nothing like the extent that is generally supposed by common-law lawyers, and to nothing like the extent that might perhaps be *a priori* expected when it is considered that we have a written code of substantive law based upon the civil as contradistinguished from the common law.' For, despite this fact, it is true that in a very large proportion of the cases decided by this court the law to be applied is sought from the same sources and by the same methods as are resorted to in the common-law states of the Union."

It might be thought that under these two systems results would be produced wholly different and distinct, but this has not been so, particularly within the recent years, said the speaker, and the differences are much less marked than the believers in the two systems contend are found in them.

The speaker said that an examination of the reports of the Supreme Court within the last few years would show that the principles there enunciated in a very large proportion of cases are the same as would be enunciated in similar cases in the common law states, and the courts have reached these principles by applying to the same sources and by using the same methods; and the speaker said that there are many lawyers in this city engaged in the practice of important branches of the law who rarely consult the civil code. This is partly due to the fact that Louisiana is one state out of many, all the others having the common system, and there is a general tendency to make the laws of our state conform to the standards of the common law.

Chief Justice Joseph A. Breaux then answered for the supreme court. His Honor said that during the hundred years of the existence of the supreme court many changes had taken place, but there still remains some things of the remote past. "The frequent saying that time does away with all things is not always true," said the speaker, "All is not reduced to dust, for much of the great and useful remains. Among these are our system of laws and records of our jurisprudence, and those of an early date still offer inviting fields to the student of the law and to the older members of the professions."

"The good lawyer is a good citizen, and while there are illustrious names in the other fields of activity in the life of the state, none are more prominent than her lawyers, for Jeremy Bentham has pronounced Livingston the first legal genius of modern times."

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Happily to steer
From grave to gay.—Pope.

Getting a Little Start. "Now, then, my hearties," said a gallant captain, "you have a tough battle before you. Fight like heroes till your powder is gone, then run. I'm a little lame, and I'll start now."

A Limit. A band of Indians made a sudden attack upon a detachment of soldiers in the mountains. The soldiers had a mountain howitzer mounted on a mule. Not having time to take it off and put it in position, they backed up the mule and let drive at the Indians. The load was so heavy that mule and all went tumbling down the hill toward the savages, who, not understanding that kind of warfare, fled like deer. Afterward one of them was captured, and when asked why he ran so, replied: "Me big Injin not afraid of little guns nor big guns; but when white man load up and fire a whole jackass at Injin, me don't know what to do."

Rather Work Than Write. Two brothers, Michael and Daniel, started in business as jobbing carpenters. Their education was limited and they had no experience whatever in business affairs. However, they were good carpenters and had a host of friends in the neighborhood.

One morning a customer called at their shop to pay a bill, and having settled the account satisfactorily he demanded a receipt. Mike asked Dan to get the receipt. Dan offered some excuse, and finally Mike retired to a little room at the back, and after a very long delay emerged with a slip of paper in his hand, his hair all ruffled and his face as flushed as though he had been lifting a hundred pound beam.

"Here is yer resate, sor. I'd rather put on a tin roof in July than write another."

The paper contained the following in boldly printed letters:

"We got our pay. Me and Dan."—Chicago Record-Herald.

Questions and Answers. It is said that Frederick of Prussia had a great mania for enlisting gigantic soldiers into the Royal Guards, and paid an enormous bounty to his recruiting officers for getting them. One day the recruiting sergeant chanced to espy a Hibernian who was at least 7 feet high; he accosted him in English, and proposed that he should enlist. The idea of military life and a large bounty so delighted Patrick that he immediately consented.

"But unless you can speak German, the King will not give you so much."

"Oh, be jabers," said the Irishman, "sure it's I that don't know a word of German."

"But," said the sergeant, "and these you can learn in a short time. The King knows every man in the Guards. As soon as he sees you he will ride up and ask you how old you are; you will say, 'twenty-seven;' next, how long have you been in the service? you must reply, 'three weeks;' finally, if you are provided with clothes and rations? you answer, 'both.'"

Pat soon learned to pronounce his answers, but never dreamed of learning the questions. In three weeks he appeared before the King in review. His Majesty rode up to him. Paddy stepped forward with "present arms."

"How old are you?" said the King.

"Three weeks," said the Irishman.

"How long have you been in the service?" asked his Majesty.

"Twenty-seven years."

"Am I or you a fool?" roared the King.

"Both," replied Patrick, who was instantly taken to the guard room, but pardoned by the King after he understood the facts of the case.

Obeying Orders. At Plymouth there is, or was, a small green opposite the Government House, over which no one was permitted to pass. Not a creature was permitted to approach, save the general's cow; and the sentries had particular orders to turn away anyone who ventured to cross the forbidden turf. One day old Lady D., having called at the general's, in order to make a short cut, bent her steps across the lawn, when she was arrested by the sentry calling out, and desiring her to return, and go the other road. She remonstrated; the man said he could not disobey his orders, which were to prevent anyone crossing that piece of ground. "But," said Lady D., with a stately air, "do you know who I am?"—"I don't know who you be, ma'am," replied the immovable sentry, "but I know who you b'aint—you b'aint the general's cow." So Lady D. wisely gave up the argument and went the other way.

Error in procedure. Sergeant Williams, the compiler of Williams' Saunders' Reports, was accustomed to spend his week ends at his place in the suburbs of London.

The erudite sergeant drove a horse which always balked upon passing under Temple Bar, and the irreverent youth of the bar were wont to say that it was passing strange that the horse of so learned a man should always demur when he should have gone to the country.

Correcting a Husband. A colored woman went to a magistrate the other day to complain of the conduct of her husband, who, she said, was a low down, worthless, trifling fellow. After listening to the long recital of the delinquencies of her neglectful spouse and her efforts to correct them, the magistrate said:

"Have you ever tried heaping coals of fire upon his head?"

"No," was the reply, "but I done tried hot water."

The Poor Dear! Regular customer—I shall want a large quantity of flowers from you next week for my daughter's coming-out.

Flower woman—Yes, mum. You shall 'ave the very best for 'er, pore dear. Wot were she put in for?—Record-Herald.

Even the Convicts Laughed. Here is a story the Kansas City Journal says is being told on Governor Hodges:

"The first time I saw the governor he was only state senator. He was called to Leavenworth to inspect the penitentiary, and I had to go down to write it up—met the governor for the first time. The warden, by way of giving a special treat to the prisoners, had collected 700 or 800 of them in the assembly hall, and in an off-hand way requested the senator to address them. Mr. Hodges wasn't as proficient in politics as he is now. He was plainly somewhat embarrassed and hesitated a minute.

"'My fellow citizens'—he began.

"That didn't sound right, and he commenced again.

"'My fellow convicts'—

"By that time the prisoners were smiling. Mr. Hodges dropped his formal manner and smiled, too.

"'Well, I don't know exactly how to address you, boys,' he amended, 'but I'm mighty glad to see so many of you here.'"

Abstemious. A Spanish priest, once exhorting the soldiers to fight like lions, added, in the ardor of his enthusiasm: "Reflect, my children, that whosoever falls to-day sups to-night in Paradise." Thunders of applause followed the sentiment. The fight began, the ranks wavered, and the priest took to his heels, when a soldier, stopping him, reproachfully referred to the promised supper in Paradise. "True, my son, true," said the priest, "but I never take supper."